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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 12, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 801

RIN 0580–AA95

Official Fees and Tolerances for Barley Protein Testing

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that previously extended the official inspection program to include testing of barley protein using near-infrared spectroscopy analyzers that were previously approved for different grains, established in the fee schedule a generic fee for all near-infrared measurements (NIR) and nuclear magnetic resonance (NMR) analyses, which is identical to existing fees. Also, we amended the regulations under the United States Grain Standards Act (USGSA) to establish performance tolerances for protein analyzers used to predict the percentage of protein in barley.

DATES: Effective: June 15, 2007.

FOR FURTHER INFORMATION CONTACT: John C. Giler, Acting Director, Field Management Division, at his e-mail address: *John.C.Giler@usda.gov* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2004, GIPSA issued a **Federal Register** notice (69 FR 64269–64270), announcing an intent to implement barley protein measurement as official criteria under the United States Grain Standards Act (USGSA) effective July 1, 2005. The **Federal Register** notice is available on the GIPSA Web site at *http://www.gipsa.usda.gov.*

On November 8, 2006, GIPSA issued a **Federal Register** interim rule (71 FR 65371–65373) seeking comments on GIPSA's intention to extend its official inspection program to include testing of Barley protein and to establish a fee for such testing. There were no comments received on this request.

This provides the barley industry with accurate results for protein that the market can rely on to negotiate price, value, and premium.

Fees

GIPSA collects fees for providing official testing services to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine protein in barley using the approved near-infrared transmittance (NIRT) analyzers are the same as those required for NIRT wheat protein; soybean oil and protein; and corn oil, protein, and starch determinations. Accordingly, the fee to test barley is the same as for tests for the above cited commodities. The fee is $2.25 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory, and for services performed at a location other than an applicant's facility in an FGIS laboratory the fees will be $10.00 per test for an original inspection service and $17.70 per test for an appeal inspection service.

Further, since the fees for near-infrared (NIR) analysis are the same as the fees for nuclear magnetic resonance (NMR) analysis, these fees are included in a generic NIR and NMR analysis fee. This should simplify the fee schedule and will not require a regulatory fee change when new NIR and NMR analysis are available for other grain products. Specifically, in 7 CFR 800.71, in tables 1 and 2, we will add a single new fee for ''NIR and NMR analysis (protein, oil, starch, etc.)'' to replace the individual fees currently listed for the following 4 categories: (1) Corn oil, protein, and starch (one of any combination), (2) soybean protein and oil (one or both), (3) wheat protein (per test), and (4) sunflower (per test). We renumbered the remaining fees listed in table 1, section 2 and table 2, sections 1 and 2. We are not making any other changes to the remaining fee amounts or categories at this time.

Tolerances

We run standard reference samples through the equipment to evaluate the accuracy of the equipment; for barley, the standard reference samples sets typically weigh between 650 and 750 grams. Due to the natural variation in individual kernels of barley and other sources of variability, each time we test the barley the testing equipment is likely to produce slightly different results. Therefore, we determine the allowable amount of differences between the test results from the standard reference sample and the expected outcome. We refer to this amount as the tolerance, which is the variation we allow for the equipment to produce accurate results.

We determined that, based upon the performance of the instruments and calibration, the maintenance tolerance will be ±0.20 percent mean deviation from the national standard NIRS instruments for the NIRS analyzers used in performing official inspections. We determined that this level of accuracy will provide reliable testing procedures and accurate results to meet prospective official customer needs and that the market can rely on to negotiate price, value, and premium. We will apply this tolerance according to testing instructions found in the GIPSA Near-Infrared Transmittance (NIRT) Handbook.

We are adding this tolerance as a new paragraph (b)(4) in 7 CFR 801.7. Previously, 7 CFR 801.7(b) only included tolerances for (1) NIRS wheat protein analyzers, (2) NIRS soybean oil and protein analyzers, and (3) NIRS corn oil, protein, and starch analyzers. As with other commodities for which NIRS analyzers are used, we will use the chemical reference protein determinations to reference and calibrate official NIRS instruments in accordance with the Combustion Method, AOAC International Method 992.23, which we previously incorporated by reference into 7 CFR 801.7(b). No change to the incorporation is required for barley protein testing.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

The Administrator of GIPSA has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Currently, near-infrared spectroscopy analyzers are being used to determine wheat protein; soybean oil and protein; and corn oil, protein, and starch in both domestic and export markets. This rule establishes tolerances to expand the use of currently approved near-infrared spectroscopy analyzers to test barley protein and establishes a generic fee for all NIR and NMR testing that is identical to current fees. Testing for barley protein is included in this fee. There are 58 official agencies (46 private entities, 12 States) that are designated and/or delegated by GIPSA to perform official grain inspection services. Most of the agencies could be considered small entities under Small Business Administration criteria.

The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service on a request basis, and locations where service is requested infrequently may make arrangements with neighboring agencies to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 2006/2007 Market Year (June to May), USDA's Economic Research Service estimated the U.S. Barley Supply to be 303,000,000 bushels. Between June 2006 and September 2006 (the months for which we have data), 20,010,000 bushels of barley were tested for protein. Ten of the 58 official agencies, performed barley protein tests in the first 11 months of fiscal year 2006. There were 5,176 barley protein tests performed; of those 2,624 were tests performed for trucks and rail cars, 2,546 were tests performed on submitted samples, and 6 were performed locally, such as within a grain elevator.

According to USDA's National Agricultural Statistics Service, there are 24,747 farms (producers) in the barley for grain category. We do not have estimates for the number of grain handlers, exporters, and feedlot operators that may be involved in submitting barley for protein testing. In general, many producers, grain handlers, exporters, and feedlot operators may be considered small entities under Small Business Administration criteria. Further, grain handlers and exporters often use testing results to determine value and premiums. The extent to which these entities will request the official barley protein or the impact of offering this service is difficult to quantify. GIPSA believes that barley producers, feedlot operators, grain handlers, and exporters will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premiums.

Fees currently are charged for NIR testing. The fees charged by GIPSA are $2.25 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory, and when an inspection service is performed at a location other than an applicant's facility in an FGIS laboratory the fees are $10.00 per test for an original inspection service and $17.70 for an appeal inspection service. The generic fee is the same as fees charged for current individual tests and their impact on applicants for services will vary depending upon usage since these tests are on a request basis.

Executive Order 12988

Executive Order 12988, Civil Justice Reform, instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule has been reviewed under this Executive Order. This final rule is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by parts 800 and 801 were previously approved by OMB under control number 0580–0013 and will not be affected by this rule.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 801

Exports, Grains, Scientific equipment.

■ For the reasons set out in the preamble, we are amending 7 CFR parts 800 and 801 as follows:

Authority: 7 U.S.C. 71—87k.

PART 800—GENERAL REGULATIONS

■ The interim final rule amending 7 CFR parts 800 and 801, which was published in the November 8, 2006, **Federal Register** at 71 FR 65371–65373, is adopted as a final rule, without change.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–9388 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–KD–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150–AH99

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the agency access authorization fees charged to licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). The amended cost is due to an increase of the review time for each application for access authorization. The formula for calculating fees remains the same as based on current Office of Personnel Management (OPM) billing rates for personnel background investigations. The formula is designed to recover the full cost of processing a request for access authorization from the licensee. The use of the fee assessment formula tied to current OPM billing rates eliminates the need for the NRC to update its access authorization fee schedules through regular rulemakings.

DATES: The effective date of the final rule is June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Emily Banks, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–0320, e-mail *erb@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Certain individuals employed by licensees or contractors of the NRC are assigned duties which require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235) or to restricted data or national security information. Individuals who require access to this material or information must obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates a background investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC will determine whether permitting the individual access to special nuclear material, restricted data, or national security information would create a security risk.

OPM conducts the required access authorization background investigations for the NRC and sets the rates charged for these investigations. The combined cost of the OPM background investigation and any related NRC processing activities are recovered from the licensee through an access authorization fee assessed by the NRC. It is the NRC's practice to publish the fee schedule for special nuclear material access authorization in 10 CFR 11.15(e)(1) and the corresponding fee schedule for restricted data and national security information access authorization in Appendix A to 10 CFR part 25. Both schedules are based on rates charged by OPM for conducting the required background investigations.

Discussion

This final rule amends §§ 11.15(e) and 25.17(f), and Appendix A to part 25 by modifying the fee charged to licensees for work performed under the MAAP and IAAP from 11.6 percent of the OPM billing rates to 31.7 percent. This modification will ensure that the NRC's administrative costs are fully recovered through access authorization fees charged to licensees.

This final rule will continue to allow licensees to calculate the NRC fee for any given application by reference to the current OPM billing schedule for personnel investigation services. Investigations Reimbursable Billing Rates for personnel background checks are published by OPM's Investigations Service in a Federal Investigation Notice (FIN). The current OPM billing rates were published as FIN 06–08 on September 11, 2006, and became effective on October 1, 2006. FIN 06–08 is available on OPM's Investigations Service Web site at *http://www.opm.gov/extra/investigate/fins.htm*. NRC licensees can also obtain the current OPM investigations rate schedule from the Personnel Security Branch of the NRC's Division of Facilities and Security by contacting the individual named under the **FOR FURTHER INFORMATION CONTACT** heading.

The amendments specify the NRC's access authorization fee for any given request as the sum of the current OPM billing rate for the required investigation, and the NRC's in-house processing fee. As noted previously, the OPM billing rate is pulled directly from the current OPM fee schedule for investigations. The tables in § 11.15(e)(2) and Appendix A to part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed in OPM's fee schedule. The NRC's in-house processing fee is 31.7 percent of the relevant OPM rate. The in-house processing fee of 31.7 percent is based on a recent NRC audit of actual in-house costs incurred in processing licensee applications for access authorization. This fixed percentage of the OPM rate, when added to the base OPM investigations charge, yields the total access authorization fee assessed by the NRC {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee}.

For example, a licensee seeking a special nuclear material ''NRC-U'' access authorization requiring a single scope background investigation is directed by the table in § 11.15(e)(2) to calculate the application fee based on the OPM billing rate for a ''Code C'' Single Scope Background Investigation (SSBI). According to the current OPM investigations fee schedule (FIN 06–08), OPM charges $3,550 for a ''Code C'' SSBI. The table instructs the licensee to calculate the NRC processing fee by multiplying $3,550 by 31.7 percent, which equals $1,125.35. The licensee then rounds the NRC processing fee to the nearest dollar, or $1,125, and adds that amount to the OPM investigations fee of $3,550 to determine the total assessed material access authorization fee: $4,675. The following table illustrates the calculation process:

Current OPM billing rate for SSBI–C	Plus NRC application processing fee			Equals total NRC access authorization fee for NRC–U application
	OPM rate	× 31.7% =	NRC fee (rounded to nearest $)	
$3,550	$3,550	× 31.7%	= $1,125.35 (rounded to $1,125)	= $4,675

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in Appendix A to part 25 cross-references each type of ''Q'' or ''L'' access authorization to the corresponding OPM investigation type. The OPM billing rate for the type of investigation referenced is determined by consulting the current OPM schedule of billing rates. This rate is then plugged into the fee assessment formula {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee}, illustrated previously, to calculate the correct NRC access authorization fee for the type of application submitted.

Section-by-Section Analysis

Section 11.15(e)

Section 11.15(e)(1) describes how the OPM bills the NRC for the cost of each background investigation of a given type and provides the formula used in calculating the material access authorization fee. The percentage of the OPM billing rates in this formula is being changed from 11.6% of the OPM billing rate to 31.7% of that rate. This section also explains how to access the OPM billing schedule and specifies that any changes to the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of OPM's most recently published billing schedule.

Section 11.15(e)(2) directs licensees to remit the appropriate access authorization fee with each application submitted, in accordance with the table presented in that section. The table cross-references each type of NRC material access authorization request to

a type of investigation in the current OPM fee schedule, and directs licensees to calculate the application fee according to the stated formula {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee}.

Section 11.15(e)(3) indicates that applications for individuals that have a current access authorization from another Federal agency may be processed expeditiously at no cost to the licensee.

Section 25.17(f)

Section 25.17(f)(1) describes how the OPM bills the NRC for the cost of each background investigation and provides the formula used in calculating national security information and restricted data access authorization fees. This section also explains how to access the OPM billing schedule and specifies that any changes to the NRC access authorization fees will be applicable to each access authorization request received on or after the effective date of OPM's most recently published billing schedule.

Section 25.17(f)(2) directs licensees to remit the appropriate national security information or restricted data access authorization fee with each application submitted. Applicants are instructed to calculate the appropriate fee by using the stated formula {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee} with reference to the table in appendix A to part 25.

Section 25.17(f)(3) indicates that applications for individuals that have a current access authorization from another Federal agency may be processed expeditiously at no cost to the licensee.

Appendix A to Part 25

The revised table in Appendix A to part 25 cross-references each type of NRC ''Q'' or ''L'' access authorization request to a type of investigation in the current OPM fee schedule, and directs licensees to calculate the application fee according to the stated formula.

Because this final rule deals solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). The final rule is effective 30 days after its publication in the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. This final rule amends the formula for calculating the NRC access authorization fee charged to licensees for work performed under MAAP and IAAP from 11.6 percent of the OPM billing rate for an investigation of a given type to 31.7 percent.

This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150–0046 and 3150–0062.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rulemaking. This final rule ensures that the NRC recovers the full cost of application processing from licensees submitting access authorization requests. The formula method for calculating these fees continues to provide a more efficient and effective mechanism for updating NRC access authorization fees in response to changes in the underlying OPM rate schedule for required personnel background investigations. These amendments are administrative in nature and will neither impose new nor relax existing safety requirements and, thus, do not call for the sort of safety/cost analysis described in the agency's regulatory analysis guidelines in NUREG/BR–0058.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 9701).

■ 2. In § 11.15, paragraph (e) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) The Office of Personnel Management (OPM) bills NRC for the cost of each background investigation conducted in support of an application for special nuclear material access authorization. The combined cost of the OPM investigation and NRC's application processing overhead are recovered from the licensee through a material access authorization fee calculated with reference to current OPM personnel investigation billing rates {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee}. Updated OPM

billing rates are published periodically in a Federal Investigations Notice (FIN) issued by OPM's Investigations Service. Copies of the current OPM billing schedule can be obtained by phoning the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration at (301–415–7739). Any change in the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of OPM's most recently published investigations billing schedule.

(2) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission. Applicants shall calculate the access authorization fee according to the stated formula {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee} and with reference to the following table:

The NRC application fee for an access authorization of type * * *	Is the sum of the current OPM billing rate charged for an investigation of type * * *	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the OPM billing rate for the type of investigation referenced multiplied by * * * (percent)
I. NRC–R [1]	NACLC—National Agency Check with Law and Credit (Standard Service, Code B).	31.7
ii. NRC–R [1] (expedited processing)	NACLC—National Agency Check with Law and Credit (Expedite Handling, Code A).	31.7
iii. NRC–R based on certification of comparable investigation [2].	No fee assessed for most applications	
iv. NRC–R renewal [1]	NACLC—National Agency Check with Law and Credit (Standard-Service, Code B).	31.7
v. NRC–U requiring single scope investigation	SSBI-SIngle Scope Background Investigation (120 Day Service, Code C).	31.7
vi. NRC–U requiring single scope investigation (expedited processing).	SSBI—Single Scope Background Investigation (35 Day Service, Code A).	31.7
vii. NRC–U based on certification of comparable investigation [2].	No fee assessed for most applications	
viii. NRC–U renewal [2]	LBI—Limited Background Investigation (120 Day Service, Code C).	31.7

[1] If the NRC, having reviewed the available data, deems it necessary to perform a single scope investigation, the appropriate NRC-U fee will be assessed before the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, the appropriate NRC-U fee will be assessed before the conduct of the investigation.

(3) Certain applications from individuals having current Federal access authorizations may be processed expeditiously at no cost to the licensee because the Commission, at its discretion, may decide to accept the certification of access authorizations and investigative data from other Federal government agencies that grant personnel access authorizations.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

■ 3. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp, p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

■ 4. In § 25.17, paragraph (f) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(f)(1) The Office of Personnel Management (OPM) bills NRC for the cost of each background investigation conducted in support of an application for access authorization. The combined cost of the OPM investigation and NRC's application processing overhead are recovered from the licensee through an authorization fee calculated with reference to current OPM personnel investigation billing rates {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee}. Updated OPM billing rates are published periodically in a Federal Investigations Notice (FIN) issued by OPM's Investigations Service. Copies of the current OPM billing schedule can be obtained by phoning the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration at (301–415–7739). Any change in the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of OPM's most recently published investigations billing schedule.

(2) Applications for access authorization or access authorization renewal processing that are submitted to the NRC for processing must be accompanied by a check or money order, payable to the U.S. Nuclear Regulatory Commission, representing the current cost for the processing of each ''Q'' and ''L'' access authorization, or renewal request. Applicants shall calculate the access authorization fee according to the stated formula {OPM rate + [(OPM rate × 31.7%), rounded to the nearest dollar] = NRC access authorization fee} and with reference to the table in appendix A to this part.

(3) Certain applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost, because the Commission, at its discretion, may decide to accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

■ 5. Appendix A to part 25 is revised to read as follows:

Appendix A to Part 25.—Fees for NRC Access Authorization

The NRC application fee for an access authorization of type * * *	Is the sum of the current OPM billing rate charged for an investigation of type * * *	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the OPM billing rate for the type of investigation referenced multiplied by * * * (percent)
Initial "L" access authorization [1]	ANACI—Access National Agency Check with Inquiries (Standard Service, Code B).	31.7
Initial "L" access authorization [1] expedited processing	ANACI—Access National Agency Check with Inquiries (Expedite Handling, Code A.	31.7
Reinstatement of "L" access authorization [2]	No fee assessed for most applications.	
Renewal of access authorization [1]	NACLC—Access National Agency Check with Inquiries (Standard Service, Code B).	31.7
Initial "Q" access authorization	SSBI—Single Scope Background Investigation (120 Day Service, Code C).	31.7
Initial "Q" access authorization (expedited processing)	SSBI—Single Scope Background Investigation (35 Day Service, Code A.	31.7
Reinstatement of "Q" access authorization [2]	No fee assessed for most applications.	
Renewal of "Q" access authorization [1]	SSBI–PR—Single Scope Background Investigation (120 Day Service, Code C).	31.7

[1] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, the appropriate fee for an Initial "Q" access authorization will be assessed before the conduct of investigation.
[2] Full fee will only be charged if an investigation is required.

Dated at Rockville, Maryland, this 26th day of March, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–9415 Filed 5–15–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27676; Airspace Docket No. 07–AGL–2]

Modification of Class E Airspace; Canby, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying Class E airspace at Canby, Myers Field, MN. Standard Instrument Approach Procedures have been developed by Canby, Myers Field, MN. Additional controlled airspace extending upward from the surface and upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Canby, Myers Field, MN.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 7 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 31, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27676/ Airspace Docket No. 07–AGL–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR Part 71 modifies the Class E airspace area at Canby, Myers Field, MN. The radius of the Class E airspace area extending upward from 700 feet or more above the surface of the earth is expanded from within a 6.3-mile radius to within a 7.4-mile radius of the airport. An extension is established within 4 miles each side of the 301 bearing from the airport extending from the 7.4-mile radius to 10.3 miles northwest of the airport. This modification brings the legal description of the Canby, Myers Field, MN Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1 of the same order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comments is received within the comment period, the regulation will become effective on

the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in development reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–27676/Airspace Docket NO. 07–AGL–2.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule doe snot have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Canby, Myers Field, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Canby, MN

Myers Field, MN
(Lat. 44°43′41″ N., long. 96°15′45″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Myers Field and within 4 miles each side of the 301° bearing from the airport extending from the 7.4-mile radius to 10.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on April 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2373 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27677; Airspace Docket No. 07–ACE–2]

Modification of Class E Airspace; Manhattan, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying the legal description of Class D airspace and Class E airspace at Manhattan Municipal Airport, KS. The establishment of adjacent Class D airspace at Fort Riley, Marshall Army Airfield, KS requires this modification. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft operating in these areas.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 31, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27677/ Airspace Docket No. 07–ACE–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nicols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the legal description of Class D airspace

and Class E airspace at Manhattan Municipal Airport, KS. The establishment of adjacent Class D airspace at Fort Riley, Marshall Army6 Airfield, KS requires this modification. A reference excluding the Class D airspace at Fort Riley, Marshall Army Airfield, KS is added to those legal descriptions. This modification brings the legal description of the Manhattan Municipal Airport, KS Class D airspace and Class E airspace into compliance with FAA Orders 7400.2F and 8260.19C. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. Class E airspace designated as surface areas are published in Paragraph 6002 of the same order. The airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27677/Airspace Docket No. 07–ACE–2.'' the postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866, (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Manhattan Municipal Airport, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Manhattan, KS

Manhattan Municipal Airport, KS
(Lat. 39°08′27″ N., long. 96°40′15″ W.)
Manhattan VOR/DME
(Lat. 39°08′44″ N., long. 96°40′07″ W.)
McDowell Creek NDB
(Lat. 39°07′03″ N., long. 96°37′46″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, KS Class D airspace and Class E airspace areas and excluding that airspace within Restricted Area R–3602B. This Class D airspace area in effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Manhattan, KS

Manhattan Municipal Airport, KS
(Lat. 39°08′27″ N., long. 96°40′15″ W.)

Within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, Class D airspace and Class E airspace areas and excluding that airspace within Restricted Area R–3602B.

* * * * *

Issued in Fort Worth, TX, on April 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2372 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27678; Airspace Docket No. 07–ACE–3]

Modification of Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comment.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying the Class E airspace area at Monticello Regional Airport, IA. The cancellation of the Non Directional Beacon (NDB) Instrument Approach Procedure (IAP) and subsequent decommissioning of the Monticello NDB requires modification of the Class E airspace area extending upward from 700 feet above the surface of the earth. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAP) to Monticello Regional Airport, IA.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 31, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27678/ Airspace Docket No. 07–ACE–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Monticello Regional Airport, IA. The southeast extension to the E5 airspace area is deleted and the reference to the Monticello NDB is removed from the legal description. This modification brings the legal description of the Monticello Regional Airport, IA Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in development reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27678/Airspace Docket No. 07–ACE–3.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Monticello Regional Airport, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Monticello, IA

Monticello Regional Airport, IA
(Lat. 42°13′13″ N., long. 91°09′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Monticello Regional Airport.

* * * * *

Issued in Fort Worth, TX, on April 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2371 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27679; Airspace Docket No. 07–ACE–4]

Modification of Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71q (14 CFR 71) by modifying the Class E airspace area at Marshalltown Municipal Airport, IA. The cancellation of the Non Directional Beacon (NDB) Instrument Approach Procedure (IAP) and subsequent decommissioning of the Marshalltown NDB requires modification of the Class E airspace area extending upward from 700 feet above the surface of the earth. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAP) to Marshalltown Municipal Airport, IA.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 31, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27679/Airspace Docket No. 07–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface (E5) at Marshalltown Municipal Airport, IA. The northwest extension of the E5 airspace area is defined by the 298° radial from the Elmwood VOR/DME instead of the NDB and the southeast extension is changed from the 135° radial from the Elmwood VOR/DME to the 138° radial to match Instrument Approach Procedures. The reference to the Marshalltown NDB is removed from the legal description. This modification brings the legal description of the Marshalltown Municipal Airport, IA Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document witdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27679/Airspace Docket No. 07–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Marshalltown Municipal Airport, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Marshalltown, IA

Marshalltown Municipal Airport, IA

(Lat. 42°06′46″ N., long. 92°55′04″ W.)

Elmwood VOR/DME

(Lat. 42°06′41″ N., long. 92°54′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshalltown Municipal Airport and within 2.6 miles each side of the 138° radial from the Elmwood VOR/DME extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 298° radial from the Elmwood VOR/DME extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on April 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2370 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27676; Airspace Docket No. 07–AGL–2]

Modification of Class E Airspace; Canby, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Canby, Myers Field, MN. Standard Instrument Approach Procedures have been developed for Canby, Myers Field, MN. Additional controlled airspace extending upward from the surface and upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Canby, Myers Field, MN.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. Comments for inclusion in the Rules Docket must be received on or before April 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27676/ Airspace Docket No. 07–AGL–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area at Canby, Myers Field, MN. The radius of the Class E airspace area extending upward from 700 feet or more above the surface of the earth is expanded from within a 6.3-mile radius to within a 7.4-mile radius of the airport. An extension is established within 4 miles each side of the 301 bearing from the airport extending from the 7.4-mile radius to 10.3 miles northwest of the airport. This modification brings the legal description of the Canby, Myers Field, MN Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1 of the same order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or

negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comments, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–27676/Airspace Docket No. 07–AGL–2.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulation adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reason discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Canby, Myers Field, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Canby, MN

Myers Field, MN
(Lat. 44°43′41″ N., long. 96°15′45″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Myers Field and within 4 miles each side of the 301° bearing from the airport expending from the 7.4-mile radius to 10.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on April 2, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2311 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27677; Airspace Docket No. 07–ACE–2]

Modification of Class E Airspace; Manhattan, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the legal description of Class D airspace and Class E airspace at Manhattan Municipal Airport, KS. The establishment of adjacent Class D airspace at Fort Riley, Marshall Army Airfield, KS requires this modification. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft operating in these areas.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. Comments for inclusion in the Rules Docket must be received on or before April 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27677/ Airspace Docket No. 07–ACE–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the legal description of Class D airspace

and Class E airspace at Manhattan Municipal Airport, KS. The establishment of adjacent Class D airspace at Fort Riley, Marshall Army Airfield, KS requires this modification. A reference excluding the Class D airspace at Fort Riley, Marshal Army Airfield, KS is added to those legal descriptions. This modification brings the legal description of the Manhattan Municipal Airport, KS Class D airspace and Class E airspace into compliance with FAA Orders 7400.2F and 8260.19C. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. Class E airspace designated as surface areas are published in Paragraph 6002 of the same order. The airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27677/Airspace Docket No. 07–ACE–2.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Manhattan Municipal Airport, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Manhattan, KS

Manhattan Municipal Airport, KS
(Lat. 39°08′27″ N, long. 96°40′15″ W.)
Manhattan VOR/DME
(Lat. 39°08′44″ N, long. 96°40′07″ W.)
McDowell Creek NDB
(Lat. 39°07′03″ N, long. 96°37′46″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, KS Class D airspace and Class E airspace areas and excluding that airspace within Restricted Area R–3602B. This Class D airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6003 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Manhattan, KS

Manhattan Municipal Airport, KS
(Lat. 39°08′27″ N., long. 96° 40′15″ W.)

Within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, Class D airspace and Class E airspace areas and excluding that airspace within Restricted Area R–37602B.

* * * * *

Issued in Fort Worth, TX, on April 2, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2310 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27679; Airspace Docket No. 07–ACE–4]

Modification of Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Class E airspace area at Marshalltown Municipal Airport, IA. The cancellation of the Non Directional Beacon (NDB) Instrument Approach Procedure (IAP) and subsequent decommissioning of the Marshalltown NDB requires modification of the Class E airspace area extending upward from 700 feet above the surface of the earth. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAP) to Marshalltown Municipal Airport, IA.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. Comments for inclusion in the Rules Docket must be received on or before April 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27679/ Airspace Docket No. 07–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface (E5) at Marshalltown Municipal Airport, IA. The northwest extension of the E5 airspace area is defined by the 298° radial from the Elmwood VOR/DME instead of the NDB and the southeast extension is changed from the 135° radial from the Elmwood VOR/DME to the 138° radial to match Instrument Approach Procedures. The reference to the Marshalltown NDB is removed from the legal description. This modification brings the legal description of the Marshalltown Municipal Airport, IA Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27679/Airspace Docket No. 07–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Marshalltown Municipal Airport, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Marshalltown, IA

Marshalltown Municipal Airport, IA
(Lat. 42°06′46″ N., long. 92°55′04″ W.)
Elmwood VOR/DME
(Lat. 42°06′41″ N., long. 92°54′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshalltown Municipal Airport and within 2.6 miles each side of the 138° radial from the Elmwood VOR/DME extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 298° radial from the Elmwood VOR/DME extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on April 2, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2307 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27678; Airspace Docket No. 07–ACE–3]

Modification of Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Class E airspace area at Monticello Regional Airport, IA. The cancellation of the Non Directional Beacon (NDB) Instrument Approach Procedure (IAP) and subsequent decommissioning of the Monticello NDB requires modification of the Class E airspace area extending upward from 700 feet above the surface of the earth. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAP) to Monticello Regional Airport, IA.

DATES: This direct final rule is effective on 0901 UTC, July 5, 2007. Comments for inclusion in the Rules Docket must be received on or before April 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27678/Airspace Docket No. 07–ACE–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Monticello Regional Airport, IA. The southeast extension to the E5 airspace area is deleted and the reference to the Monticello NDB is removed from the legal description. This modification brings the legal description of the Monticello Regional Airport, IA Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace area extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27678/Airspace Docket No. 07–ACE–3.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Monticello Regional Airport, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Monticello, IA

Monticello Regional Airport, IA
(Lat. 42°13′13″ N., long. 91°09′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Monticello Regional Airport.

* * * * *

Issued in Fort Worth, TX, on April 2, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2308 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30549 Amdt. No. 3217]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 16, 2007. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register**

expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on May 4, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 7 JUN 2007

Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 25L; ILS RWY 25L (CAT II); ILS RWY 25L (CAT III), Amdt 10A

Effective 5 JUL 2007

Buckland, AK, Buckland, RNAV (GPS) RWY 11, Amdt 1
Buckland, AK, Buckland, RNAV (GPS) RWY 29, Orig
Buckland, AK, Buckland, NDB/DME RWY 11, Amdt 1
Buckland, AK, Buckland, NDB/DME RWY 29, Amdt 1
Buckland, AK, Buckland, Takeoff Minimums and Obstacle DP, Amdt 1
Emmonak, AK, Emmonak, RNAV (GPS) RWY 16, Amdt 2
Emmonak, AK, Emmonak, RNAV (GPS) RWY 34, Amdt 2
Homer, AK, Homer, RNAV (GPS) Y RWY 3, Orig
Homer, AK, Homer, RNAV (GPS) Y RWY 21, Orig
Homer, AK, Homer, RNAV (GPS) Z RWY 3, Orig
Homer, AK, Homer, RNAV (GPS) Z RWY 21, Orig
Homer, AK, Homer, GPS RWY 3, Orig-B, CANCELLED
Homer, AK, Homer, GPS RWY 21, Orig-B, CANCELLED
Noatak, AK, Noatak, NDB/DME RWY 1, Amdt 2
Noatak, AK, Noatak, Takeoff Minimums and Obstacle DP, Amdt 1
Pago Pago, AS, Pago Pago Intl, Takeoff Minimums and Textual DP, Amdt 4
Ash Flat, AR, Sharp County Regional, RNAV (GPS) RWY 4, Orig
Ash Flat, AR, Sharp County Regional, RNAV (GPS) RWY 22, Orig
Ash Flat, AR, Sharp County Regional, GPS RWY 4, Orig-B, CANCELLED
Ash Flat, AR, Sharp County Regional, Takeoff Minimums and Obstacle DP, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV (GPS) RWY 25L, Orig-B
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV (GPS) RWY 25R, Amdt 1A
Jacksonville, FL, Cecil Field, ILS OR LOC RWY 36R, Amdt 1
Jacksonville, FL, Cecil Field, Takeoff Minimums and Obstacle DP, Orig
Cartersville, GA, Cartersville, RNAV (GPS) RWY 1, Amdt 1
Lawrenceville, GA, Gwinnett County-Briscoe Field, RNAV (GPS)–A, Orig
Lawrenceville, GA, Gwinnett County-Briscoe Field, GPS-A, Orig-A, CANCELLED
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) RWY 10L, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) RWY 10R, Amdt 1
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) RWY 28L, Amdt 3
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) RWY 28R, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Fld, LOC BC RWY 28L, Amdt 1
Boise, ID, Boise Air Terminal/Gowen Fld, NDB RWY 10R, Amdt 28
Chicago, IL, Lansing Muni, RNAV (GPS) RWY 9, Orig
Chicago, IL, Lansing Muni, RNAV (GPS) RWY 27, Orig
Chicago, IL, Lansing Muni, GPS RWY 27, Orig-A, CANCELLED
Chicago, IL, Lansing Muni, VOR–A, Amdt 6
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 10, Amdt 15
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 14R, ILS RWY 14R (CAT II); ILS RWY 14R (CAT III), Amdt 30
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 28, ILS RWY 28 (CAT II); ILS RWY 28 (CAT III), Amdt 14
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 32L, Amdt 2
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 10, Amdt 2
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 14R, Amdt 1
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 28, Amdt 1
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Y RWY 27L, Orig, CANCELLED
Hugoton, KS, Hugoton Muni, RNAV (GPS) RWY 2, Orig
Hugoton, KS, Hugoton Muni, RNAV (GPS) RWY 20, Orig
Hugoton, KS, Hugoton Muni, NDB RWY 2, Amdt 3

Hugoton, KS, Hugoton Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Middlesboro, KY, Middlesboro-Bell County, RNAV (GPS)–A, Orig
Waterville, ME, Waterville Robert LaFleur, RNAV (GPS) RWY 23, Orig
Plymouth, MA, Plymouth Muni, RNAV (GPS) RWY 6, Orig
Plymouth, MA, Plymouth Muni, GPS RWY 6, Amdt 2B, CANCELLED
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 12, Orig
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 23, Orig
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 30, Orig
Brainerd, MN, Brainerd Lakes Rgnl, ILS OR LOC RWY 23, Amdt 7
Brainerd, MN, Brainerd Lakes Rgnl, NDB RWY 23, Amdt 6
Canby, MN, Myers Field, RNAV (GPS) RWY 12, Orig
Canby, MN, Myers Field, RNAV (GPS) RWY 30, Orig
Canby, MN, Myers Field, Takeoff Minimums and Obstacle DP, Orig
Kirksville, MO, Kirksville Rgnl, ILS OR LOC/DME RWY 36, Orig
Kirksville, MO, Kirksville Rgnl, RNAV (GPS) RWY 18, Amdt 1
Kirksville, MO, Kirksville Rgnl, RNAV (GPS) RWY 36, Amdt 1
Kirksville, MO, Kirksville Rgnl, LOC/DME RWY 36, Amdt 6B, CANCELLED
Kirksville, MO, Kirksville Rgnl, Takeoff Minimums and Textual DP, Orig
Greenville, MS, Mid Delta Regional, VOR/DME RWY 18R, Orig
Greenville, MS, Mid Delta Regional, VOR/DME RWY 18L, Amdt 13
Greenville, MS, Mid Delta Regional, VOR RWY 18R, Amdt 5A, CANCELLED
Starkville, MS, George M. Bryan, NDB–C, Amdt 3
Starkville, MS, George M. Bryan, Takeoff Minimums and Obstacle DP, Orig
Vicksburg, MS, Vicksburg Muni, RNAV (GPS) RWY 1, Orig
Vicksburg, MS, Vicksburg Muni, NDB RWY 1, Amdt 2
Vicksburg, MS, Vicksburg Muni, Takeoff Minimums and Obstacle DP, Amdt 2
West Point, MS, McCharen Field, Takeoff Minimums and Obstacle DP, Amdt 1
Millville, NJ, Millville Muni, VOR–A, Amdt 1
Wilmington, OH, Clinton Field, RNAV (GPS) RWY 3, Orig
Wilmington, OH, Clinton Field, RNAV (GPS) RWY 21, Orig
Wilmington, OH, Clinton Field, GPS RWY 21, Orig, CANCELLED
Wilmington, OH, Clinton Field, VOR-A, Amdt 2
Wilmington, OH, Clinton Field, Takeoff Minimums and Obstacle DP, Amdt 2
Madras, OR, City-County, RNAV (GPS)–A, Orig
Madras, OR, City-County, Takeoff Minimums and Textual DP, Orig
St. Marys, PA, St. Marys Muni, LOC/DME RWY 28, Amdt 4
Jacksboro, TN, Campbell County, RNAV (GPS) RWY 23, Orig
Jacksboro, TN, Campbell County, GPS RWY 23, Orig-A, CANCELLED
Beeville, TX, Beeville Muni, RNAV (GPS) RWY 12, Orig
Beeville, TX, Beeville Muni, RNAV (GPS) RWY 30, Orig
Beeville, TX, Beeville Muni, NDB OR GPS RWY 30, Amdt 2A, CANCELLED
Beeville, TX, Beeville Muni, VOR/DME RWY 12, Amdt 6
Beeville, TX, Beeville Muni, Takeoff Minimums and Obstacle DP, Orig
Bryan, TX, Coulter Field, RNAV (GPS) RWY 15, Orig
Bryan, TX, Coulter Field, RNAV (GPS) RWY 33, Orig
Bryan, TX, Coulter Field, VOR/DME–A, Amdt 3
Bryan, TX, Coulter Field, Takeoff Minimums and Obstacle DP, Orig
Coleman, TX, Coleman Muni, NDB RWY 15, Amdt 2, CANCELLED
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 33R, Amdt 12
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) RWY 33R, Amdt 1
Longview, TX, East Texas Regional, RNAV (GPS) RWY 13, Orig
Longview, TX, East Texas Regional, RNAV (GPS) RWY 17, Orig
Longview, TX, East Texas Regional, RNAV (GPS) RWY 31, Orig
Longview, TX, East Texas Regional, RNAV (GPS) RWY 35, Orig
Longview, TX, East Texas Regional, Takeoff Minimums and Obstacle DP, Orig

Effective 2 AUG 2007

Marshfield, MA, Marshfield Muni-George Harlow Field, Takeoff Minimums and Obstacle DP, Orig
Indian Head, MD, Maryland, Takeoff Minimums and Obstacle DP, Amdt 1
Manchester, NH, Manchester, Takeoff Minimums and Obstacle DP, Amdt 6

Effective 30 AUG 2007

Tok, AK, Tok Junction, RNAV (GPS) RWY 7, Orig-A
Tok, AK, Tok Junction, RNAV (GPS)–A, Orig-A
Chicago, IL, Chicago-O'Hare Intl, VOR RWY 22R, Amdt 9, CANCELLED
French Lick, IN, French Lick Muni, NDB RWY 8, Orig-A, CANCELLED

[FR Doc. E7–9242 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0090]

Applicability of Amendments—Additional Instances Where Administrative Sanctions Can Be Imposed—Title II and Title XVI

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of applicability date.

SUMMARY: On October 18, 2006, we published final rules in the **Federal Register** at 71 FR 61403 that made some revisions to 20 CFR 404.459 and 416.1340 to reflect section 201(a) of the Social Security Protection Act of 2004 (SSPA) providing for the imposition of administrative sanctions based on the failure to disclose information to us. Consistent with the effective date provisions enacted by Congress for section 201 of the SSPA, we stated in the preamble to those final rules that those sections of the regulations reflecting section 201 of the SSPA would not be applicable until implementation of the centralized computer file described in section 202 of the SSPA. That centralized computer file has now been fully implemented. Therefore, we are publishing this notice to announce the applicability date of the revisions to 20 CFR 404.459 and 416.1340.

DATES: The amendments to 20 CFR 404.459 and 416.1450 published October 16, 2006 (71 FR 61403) became applicable November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Margaret Smilow, Social Insurance Specialist, Office of Income Security Programs, 252 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD. 21235–6401, (410) 965–7976.

SUPPLEMENTARY INFORMATION: Section 207 of the Foster Care Independence Act of 1999 amended title XI of the Social Security Act by adding section 1129A to provide for the imposition of administrative sanctions by SSA against persons who knowingly make a statement that is false or misleading or omits a material fact for use in determining any right to or amount of monthly benefits under titles II or XVI of the Social Security Act.

Section 201 of the SSPA of 2004 amended section 1129A to also allow for the imposition of the administrative sanction against persons who fail to disclose information that is material to eligibility or benefit amount if the person knows or should know that the withholding of such information is misleading. These sanctions are in addition to any other penalties prescribed by law that may result from false/misleading statements or failure to report material facts.

The SSPA provided that this change would only apply with respect to violations committed after the date on which there was a title II and title XVI computerized system in place which would document reporting of monthly wages. The title XVI system became functional on November 27, 2006. The title II system became operational in 2005.

As a result of the implementation of this computerized system on November 27, 2006, the revisions to 20 CFR 404.459 and 419.1340 expanding the situations where administrative sanctions may be imposed became applicable. A person is subject to a sanction for failing to disclose information that is material to determining title II/title XVI benefit eligibility or amounts if:

- The person knows or should know the information is material to benefit eligibility or amount; and
- The person knows or should know the withholding of the information is misleading; and
- The failure to disclose occurred after November 27, 2006.

We have revised our instructional manuals and other documents to reflect this additional instance where administrative sanctions may be imposed.

Dated: May 8, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E7–9226 Filed 5–15–07; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

[Docket No. SSA–2006–0044]

Applicability of Amendment—Additional Instances Where Civil Monetary Penalties and/or Assessments Can Be Imposed

AGENCY: Office of the Inspector General (OIG), Social Security Administration (SSA).

ACTION: Announcement of applicability date.

SUMMARY: This document announces that on November 27, 2006, the Commissioner of Social Security (Commissioner) implemented the centralized computer file described in section 202 of the Social Security Protection Act of 2004 (SSPA). Until this centralized computer file was implemented, the portion of the final rules published on May 17, 2006, at 71 FR 28574, relating to the imposition of civil monetary penalties and/or assessments for withholding of information from, or failure to disclose information to, SSA, was not in effect.

DATES: The amendment to 20 CFR 498.102(a)(3) published May 17, 2006 (71 FR 28574) became applicable November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy A. Buller, Chief Counsel to the Inspector General, Social Security Administration, Office of the Inspector General, Room 3–ME–1, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2827. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online*, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: Section 201(a)(1) of the SSPA, Public Law 108–203, amended section 1129 of the Social Security Act (Act) (42 U.S.C. 1320a–8), to allow for the imposition of civil monetary penalties and/or assessments for the withholding of information from, or failure to disclose information to, SSA.

Pursuant to section 201(d) of the SSPA, this amendment to section 1129 of the Act ''shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202'' of the SSPA. Section 202 of the SSPA provided for the implementation by the Commissioner of ''a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status.''

On May 17, 2006, at 71 FR 28574, the OIG published the final rules reflecting and implementing the amendments to sections 1129 and 1140 of the Social Security Act made by the SSPA and Public Law 106–169, the Foster Care Independence Act of 1999, including section 201(a)(1) of the SSPA. At that time we stated the following regarding the implementation of section 201(a) of the SSPA:

Applicability Date: Section 498.102(a)(3), as it relates to the withholding of information from, or failure to disclose information to, SSA, will be applicable upon implementation of the centralized computer file described in section 202 of Public Law 108–203. If you want information regarding the applicability date of this provision, call or write the SSA contact person. SSA will publish a document announcing the applicability date in a subsequent **Federal Register** document. The remainder of § 498.102(a)(3), currently in effect, is unaffected by this delay.

On November 27, 2006, SSA fully implemented the centralized computer file described in section 202 of the SSPA. Therefore, pursuant to the requirements of section 201 of the SSPA and the final rules published at 71 FR 28574, this notice announces that 20 CFR 498.102(a)(3), as it relates to the withholding of information from, or failure to disclose information to, SSA, is applicable to violations committed after November 27, 2006.

Dated: April 23, 2007.

Patrick P. O'Carroll, Jr.,

Inspector General, Social Security Administration.

[FR Doc. E7–9228 Filed 5–15–07; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0517, EPA–R05–OAR–2006–0563; FRL–8314–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Redesignation of Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Benzie County, Cass County, Huron County, and Mason County 8-Hour Ozone Nonattainment Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making determinations under the Clean Air Act (CAA) that the nonattainment areas of Flint (Genesee and Lapeer Counties), Grand Rapids (Kent and Ottawa Counties), Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), Muskegon (Muskegon County), Benton Harbor (Berrien County), Benzie County, Cass County, Huron County, and Mason County have attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). For the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas, these determinations are based on two overlapping three-year periods of complete, quality-assured ambient air quality monitoring data for the 2002–2004 seasons and the 2003–2005 seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas. Quality assured monitoring data for 2006 show that the areas continue to attain the standard. For the Flint, Muskegon, Benton Harbor, and Cass County areas, these determinations are based on three years of complete quality-assured ambient air quality monitoring data for the 2004–2006 seasons that demonstrate that the 8-hour

ozone NAAQS has been attained in the areas. In addition, quality-assured data for 2003–2005 also demonstrate that the 8-hour NAAQS was attained during this period.

EPA is approving requests from the State of Michigan to redesignate the Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Benzie County, Cass County, Huron County, and Mason County areas to attainment of the 8-hour ozone NAAQS. The Michigan Department of Environmental Quality (MDEQ) submitted these requests on May 9, 2006 and June 13, 2006, and supplemented them on May 26, 2006, August 25, 2006, and November 30, 2006. In approving these requests, EPA is also approving, as revisions to the Michigan State Implementation Plan (SIP), the State's plans for maintaining the 8-hour ozone NAAQS through 2018 in these areas. EPA is also finding adequate and approving, for purposes of transportation conformity, the State's 2018 Motor Vehicle Emission Budgets (MVEBs) for the Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Benzie County, Cass County, Huron County, and Mason County areas.

DATES: This final rule is effective on May 16, 2007.

ADDRESSES: EPA has established a docket for this action as it relates to the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas under Docket ID No. EPA–R05–OAR–2006–0517 and a docket for this action as it relates to the Flint, Muskegon, Benton Harbor, and Cass County areas under Docket ID No. EPA–R05–OAR–2006–0563. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. What Is the Background for This Rule?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the current 8-hour standard, the ozone NAAQS was based on a 1-hour standard. At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Benzie County, Cass County, Huron County, and Mason County areas were all designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Under EPA's Phase 1 8-hour ozone implementation rule, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Muskegon and Cass County areas were designated as subpart 2, 1-hour ozone moderate [1] nonattainment areas by EPA on April 30, 2004, (69 FR 23857, 23911), based on air quality monitoring data from 2001–2003. The Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benton Harbor, Benzie County, Huron County, and Mason County areas were all designated as subpart 1, 8-hour ozone nonattainment areas by EPA on April 30, 2004, (69 FR 23857, 23910–23911) based on 2001–2003 air quality monitoring data.

Under section 181(a)(4) of the CAA, EPA may adjust the classification of an ozone nonattainment area to the next higher or lower classification if the design value for the area is within five percent of the cut-off for that higher or lower classification. On September 22, 2004, EPA adjusted the classification of several nonattainment areas which had been designated and classified under subpart 2 on April 30, 2004. At that time, EPA adjusted the classifications of the Muskegon and Cass County nonattainment areas from moderate to marginal (69 FR 56697, 56708–56709). It should be noted that the United States Court of Appeals for the District of Columbia Circuit has recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, No. 04–1200., 472 F.3d 882 (DC Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on these and other proposed redesignation actions. 72 FR 13452 (March 22, 2007) See discussion below.

[1] Under subpart 2 of the CAA, areas are further classified as marginal, moderate, serious, severe or extreme based on the design value for the area.

40 CFR Section 50.10 and 40 CFR Part 50, Appendix I provide that the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR Part 50, Appendix I, 2.3(d).

On May 9, 2006, Michigan requested that EPA redesignate the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas to attainment for the 8-hour ozone standard. The State supplemented its redesignation requests on May 26, 2006 and August 25, 2006. The redesignation requests included three years of complete, quality-assured data for the period of 2002 through 2004, as well as complete quality assured data for 2005, indicating the 8-hour NAAQS for ozone had been attained for all of the areas covered by the request. Subsequently EPA reviewed the quality assured monitoring data for 2004–2006. These data show that these areas continued to attain the standard for 2004–2006. See Table 1 below.

TABLE 1.—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND 3-YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

Area	County	Monitor	2004 4th high (ppm)	2005 4th high (ppm)	2006 4th high (ppm)	2004–2006 average (ppm)
Grand Rapids	Kent	Grand Rapids 26–0810020.	0.068	0.083	0.082	0.077
		Evans 26–0810022	0.072	0.083	0.081	0.078
	Ottawa	Jenison 26–1390005	0.069	0.086	0.083	0.079
Kalamazoo-Battle Creek	Kalamazoo	Kalamazoo 26–0770008.	0.068	0.081	0.068	0.072
Lansing-East Lansing	Clinton	Rose Lake 26–0370001.	0.070	0.078	0.071	0.073
	Ingham	Lansing-East Lansing 26–0650012.	0.068	0.082	0.071	0.073
Benzie	Benzie	Frankfort 26–0190003	0.075	0.086	0.080	0.080
Huron	Huron	Harbor Beach 26–0633006.	0.068	0.077	0.073	0.072
Mason	Mason	Scottville 26–1050007	0.071	0.085	0.076	0.077

On June 13, 2006, Michigan requested that EPA redesignate the Flint, Muskegon, Benton Harbor, and Cass County areas to attainment for the 8-hour ozone standard. The State supplemented its requests on August 25, 2006 and November 30, 2006. The redesignation requests included three years of complete, quality-assured data for 2004–2006, indicating the 8-hour NAAQS for ozone had been attained for all of the areas covered by the request. Data submitted by the State also showed attainment in 2003–2005. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On December 7, 2006 (71 FR 70915), EPA proposed to make determinations that the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas have attained the 8-hour ozone NAAQS, and to approve the redesignations of the areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA also proposed to approve maintenance plan SIP revisions for the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas. Additionally, EPA found adequate and proposed to approve the 2018 Motor Vehicle Emissions Budgets (MVEBs) submitted by Michigan for these areas in conjunction with the redesignation requests.

On January 8, 2007 (72 FR 699), EPA proposed to make determinations that the Flint, Muskegon, Benton Harbor, and Cass County areas have attained the 8-hour ozone NAAQS, and to approve the redesignations of the areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA also proposed to approve the maintenance plan SIP revisions for the Flint, Muskegon, Benton Harbor, and Cass County areas. Additionally, EPA found adequate and proposed to approve the 2018 MVEBs submitted by Michigan for these areas in conjunction with the redesignation requests. The rationale for EPA's proposed actions is explained in the notices of proposed rulemaking and will not be restated here.

In addition, as noted above, EPA issued a supplemental proposed rulemaking setting forth EPA's views on the potential impact of the Court's ruling in *South Coast Air Quality Management District* v *EPA*. EPA provided a 15-day review and comment period on this supplemental proposed rulemaking. The public comment period closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments but does not believe any specific response to comments is necessary with respect to these comments. In addition, several of these comments included additional rationale for proceeding with these proposed designations. EPA had not requested comment on any additional rationale, does not believe any additional rationale is necessary, and similarly does not believe any specific response to these comments is necessary, and thus has not provided any.

II. What Comments Did We Receive on the Proposed Actions?

EPA provided a 30-day review and comment period on the proposed rules. The public comment periods closed on January 1, 2007 and February 7, 2007. EPA received a letter from the Crystal Lake Watershed Association in favor of the redesignation of Benzie County. EPA received adverse comments from the Little River Band of Ottawa Indians and from three citizens. Unless an area was specifically identified by the commentor, EPA assumed that the

comment applied to all areas. A summary of the adverse comments received, and EPA's responses, follows.

(1) *Comment:* Redesignation of Mason, Benzie and Muskegon Counties at this time would be premature because the data are misleading. Although the three-year averages for both Mason and Benzie Counties during the period of 2002–2004, 2003–2005 and 2004–2006 were less than 0.085 parts per million (ppm), which puts both counties into attainment for the 8-hour ozone NAAQS, 2004 was a statistical outlier. This argument could be extended to other counties affected by EPA's proposals.

Response: The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that, among other things, the Administrator determines that the area has attained the applicable NAAQS. A determination that an area has attained the standard is based on an objective review of air quality data. There are no provisions in the CAA or in EPA redesignation policy for using monitoring data trends or statistical analyses as criteria for determining attainment in evaluating a redesignation request.

EPA promulgated the current 8-hour ozone standard on July 18, 1997 (62 FR 38856). As discussed in detail in the proposed rule, an area is considered to be in attainment of the 8-hour ozone standard if the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year does not exceed 0.084 ppm. Three years of air quality data are used to allow for year-to-year variations in meteorology. The three year averaging period provides a reasoned balance between evening out meteorological effects and properly addressing real changes in emission levels. See 66 FR 53094, 53100 (October 19, 2000) (redesignation of Pittsburgh) and 69 FR 21717, 21719–21720 (April 22, 2004) (determination of attainment for the Bay Area). In the case of Mason and Benzie Counties, both areas have attained the standard for three three-year periods, which is also the case for the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing and Huron County areas. The Muskegon area has attained the standard for two three-year periods, which is also the case for the Flint, Benton Harbor and Cass County areas. In all cases, these areas have demonstrated attainment for longer than is required. As the commentor acknowledges, the areas are monitoring attainment of the 8-hour standard. EPA has no basis for using other criteria to determine if an area is attaining the 8-hour ozone NAAQS.

It should be noted that, to put recent western Michigan meteorological monitoring data into perspective, EPA obtained historical temperature data recorded at the Muskegon County Airport from the National Oceanic and Atmospheric Administration's (NOAA) National Climate Data Center. Review of average high temperatures and number of days with temperatures greater than or equal to 90°F recorded over the ozone season for the past 50 years indicates that the year-to-year variations recorded from 2003–2006, are typical of historical values. Average high temperatures are above the 50 year average for 2003, 2005 and 2006 and slightly below the 50 year average for 2004. Taken together, average high temperatures for the 2003–2005 and 2004–2006 time periods are above the 50 year average. Considering the number of days with temperatures of 90°F or greater, values for the 2003–2005 and 2004–2006 time periods are above the 50 year average. This information does not support the commentor's contention that abnormal meteorology was responsible for improvements in air quality.

In addition, as discussed at length in the proposals, the areas have met the separate redesignation requirement of demonstrating that the improvement in air quality is due to permanent and enforceable emissions reductions. This further refutes the contention that favorable meteorology accounts for attainment.

(2) *Comment:* EPA should look with more scrutiny at the 4th highest 8-hour averages for each year. Reviewing these values, it is difficult to predict whether Benzie, Mason, and Muskegon Counties will be able to maintain the ozone standard starting with the 2005–2007 data, since the failing values for next year are close to what the values have been for the past two years. Muskegon has a failing value lower than the 4th highest 8-hour average for every year except 2004.

Response: As discussed above, neither the CAA nor EPA's interpretation of CAA requirements in policy memoranda provide for using monitoring data trends or statistical analyses as criteria for determining attainment for evaluating a redesignation request. Section 107(d)(3)(E) of the CAA allows for redesignation provided that, among other things, the Administrator determines that the area has attained the applicable NAAQS. As described in detail in the proposed rules, the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Flint, Benzie County, Cass County, Huron County, and Mason County areas are all monitoring attainment of the 8-hour ozone NAAQS.

In addition, consistent with the requirements of sections 175A and 107(d)(3)(E) of the CAA, Michigan has submitted maintenance plans for the areas which show continued maintenance and continuing reductions in NO_X and VOC emissions through 2018, further decreasing peak ozone levels and maintaining ozone attainment. It should also be noted that reductions in emissions that have occurred and that will continue to occur in upwind areas will contribute to maintenance of the NAAQS in these areas. Some of these measures include the NO_X SIP call, stationary source NO_X regulations, the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles (Tier 2), low sulfur diesel fuel standards and heavy-duty diesel engine standards. Additionally, Illinois, Indiana, Wisconsin, and Michigan, along with 25 other states and the District of Columbia, are subject to the Clean Air Interstate Rule, which should result in reduced NO_X emissions and a reduction in transported ozone. Furthermore, as demonstrated by the contingency measure provisions required by section 175A(d), the CAA clearly anticipates and provides for situations where an area might monitor a violation of the NAAQs after having been redesignated to attainment. Michigan has included contingency measure provisions consistent with CAA requirements in their maintenance plans to address any possible future violation of the NAAQS.

(3) *Comment:* The results from 2004 are abnormally low due solely to the weather. While we agree that there is an overall downward trend, we insist that the unfavorable weather for ozone formation led to atypically low results in 2004. The results for that year are single handedly dragging down the three year average and artificially bringing the areas into attainment before they have reached a maintainable situation. The commentor is particulary concerned with the Benzie County, Mason County, and Muskegon areas.

Response: It should be noted that as discussed above, the year to year temperature variations recorded from 2003–2006, are typical of historical values and EPA does not believe that the 2004 data were abnormally low. Moreover, as discussed in greater detail above, section 107(d)(3)(E)(i) of the CAA requires that the Administrator determine that the area has attained the applicable NAAQS. A determination that an area has attained the NAAQS is

based on an objective review of air quality data. An area is considered to be in attainment of the 8-hour ozone standard if the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year does not exceed 0.084 ppm. Three years of air quality data are used to allow for year-to-year variations in meteorology. The adequacy of the ozone standard is not at issue in this rulemaking. Comments regarding the adequacy of the ozone standard would have more appropriately been submitted in response to the proposal of the 8-hour standard.

In addition, as discussed above, Michigan has submitted maintenance plans which show continuing reductions in NO_X and VOC emissions through 2018, and include contingency measure provisions to address any possible future violation of the NAAQS. Moreover, as discussed in the proposals, 71 FR 70921 (December 7, 2006) and 72 FR 704–705 (January 8, 2007), Michigan has shown that the improvement in air quality is due to permanent and enforceable emissions reductions, and not to favorable meteorology. Emission reductions from within the areas, as well as regional reductions from upwind areas, are responsible for attainment. Reductions in VOC and NO_X emissions have occurred in Michigan, as well as in upwind areas, as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: The NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In accordance with EPA's NO_X SIP call, Michigan developed rules to control NO_X emissions from electric generating units (EGUs), major non-EGU industrial boilers, and major cement kilns. Between 2000 and 2004, this resulted in a 40,577 ton reduction in ozone season NO_X emissions. Illinois and Indiana have also adopted regulations to comply with the NO_X SIP call which have resulted in a 155,831 ton reduction in ozone season NO_X emissions between 2000 and 2004. While Wisconsin was not subject to the NO_X SIP call, the state has adopted NO_X regulations to meet rate of progress requirements. The emission reductions from all of these programs are permanent and enforceable.

(4) *Comment:* MDEQ's maintenance plans do not address the fact that the Lake Michigan shoreline counties are overwhelmingly impacted by ozone originating from sources across the lake in the Chicago-Gary-Milwaukee area. Instead, MDEQ insists on controlling local sources when the reason for the problem is solely rooted in pollution traveling on prevailing winds across the lake. It is disingenuous for MDEQ to submit a maintenance plan to EPA that does not address the need for controlling these distant sources as they are the root cause. Furthermore, it is equally as wrong for EPA to accept such a request without reassurances from MDEQ in writing to pursue its options in Section 126 of the CAA regardless of the consequences. EPA should deny MDEQ's request unless they include Section 126 provisions in the maintenance plan. If EPA chooses to accept this request without commitments in writing from MDEQ to pursue its options under Section 126, then the onus is on EPA to pursue those actions. The commentor is particularly concerned with the Benzie County, Mason County and Muskegon areas.

Response: MDEQ has included in its maintenance plans, control measures which the State has the authority to adopt and enforce. MDEQ does not have the authority to adopt and enforce measures to control sources located in Illinois, Indiana, or Wisconsin. It would be inappropriate for the State to include in its maintenance plans contingency measures that it could neither adopt nor enforce.

Section 110(a)(2)(D) of the CAA, which applies to all SIPs for each pollutant covered by a NAAQS, and for all areas regardless of their attainment designation, provides that a SIP must contain provisions preventing its sources from contributing significantly to nonattainment problems or interfering with maintenance in downwind States.

Section 126 of the CAA authorizes a downwind state to petition EPA for a finding that any new or existing major stationary source or group of stationary sources upwind of the state emits or would emit in violation of the prohibition of section 110(a)(2)(D) because their emissions contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in the state. Michigan retains the authority, under section 126 of the CAA, to petition EPA should this become necessary in the future. It is unnecessary for Michigan to cite section 126 of the CAA in its maintenance plans to preserve this option. Upwind areas will remain subject to the provisions of section 110(a)(2)(D) and section 126 after the areas are redesignated to attainment, and redesignation will not remove the protections of these provisions for lakeshore counties.

Furthermore, Section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement, as well as to mitigate interstate transport of the type described in section 184 (concerning ozone transport in the northeast) or section 176A (concerning interstate transport in general), and thereby require the State to submit, within a specified period, a SIP revision to correct the inadequacy. EPA exercised this authority in issuing the NO_X SIP call, and would do so again, as necessary, if it finds that SIPs do not adequately address transport.

In fact, upwind areas, including Chicago-Gary-Lake County, IL–IN and Milwaukee-Racine, WI, are continuing to implement measures to reduce ozone precursors; including the NO_X SIP call, stationary source NO_X regulations, NLEV, Tier 2, low sulfur diesel fuel standards and heavy-duty diesel engine standards. Additionally, Illinois, Indiana, Wisconsin, and Michigan, along with 25 other states and the District of Columbia, are subject to the Clean Air Interstate Rule, which should result in reduced NO_X emissions and a reduction in transported ozone.

(5) *Comment:* One commenter disagreed with the assertion that Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated Nov. 6, 2000, (E.O. 13175) does not apply to the Region's proposed approval of MDEQ's requests to redesignate certain counties from ''non-attainment'' to ''attainment'' for ozone pursuant to Section 107(d) of the Clean Air Act. The commenter states that EPA's action has tribal implications under E.O. 13175.

Response: E.O. 13175 was signed on November 6, 2000, and sets forth various provisions regarding consultation and coordination between Federal agencies undertaking ''policies that have tribal implications'' and Indian tribal governments. Under E.O, 13175, the term ''policies that have tribal implications'' refers to ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.''

It is not necessary to address the scope of E.O. 13175 at this time. Federal policy and EPA's 1984 Indian Policy encourage the Agency to consult with Tribes prior to taking actions that affect Tribal governments. Recognizing tribal

interest in this matter, the Region offered to consult with all Michigan Tribes with respect to the redesignation requests. Five Tribes accepted this offer, and consultation occurred by means of a conference call on August 30, 2006 and a face-to-face meeting held at the Nottawaseppi Huron Band of Potawatomi Indians tribal center on September 26, 2006. Consequently, the purposes of the executive order were satisfied in this case.

(6) *Comment:* Even though EPA was only required to consult with tribes once, it is by no means prohibited from talking to them again. At the very least there are two requests submitted by MDEQ (May 9, 2006 and June 13, 2006) which should translate to two consultation processes. Furthermore, the effectiveness of the consultation process has been significantly diminished since the current Regional Administrator and Air Division Director were not in their current positions or on leave when the meeting took place.

Response: We believe that the consultation process was constructive and appreciate the considered comments provided by the Little River Band of Ottawa Indians. However, at this time we believe that the conference call and meeting constitute adequate consultation and do not believe that value would be added through additional consultation on this issue. Both the May 9, 2006, and June 13, 2006, redesignation submittals were discussed in the conference call and at the meeting. Furthermore, the comments do not raise any issues that were not discussed during the consultation. With respect to EPA management changes, we believe that this has no bearing on the effectiveness or adequacy of the consultation process. Appropriate EPA representatives participated in the consultation process and current management has been comprehensively briefed.

(7) *Comment:* The CAA requires EPA to act within 18 months of the submission of a redesignation request. Michigan submitted the requests on May 9, 2006 and June 13, 2006. This means EPA does not have to approve or deny the requests until November 9, 2007 and December 13, 2007, respectively. Thus, EPA could choose to wait and see what will happen with these counties after the end of next ozone season. More importantly though, EPA could see what the three-year average is without the abnormally low 2004 data skewing the results. EPA should hold off on redesignating these counties until after 2007's ozone season is complete.

Response: As noted above in responses to comments, the year to year temperature variations recorded from 2003–2006, are typical of historical values and EPA does not believe that the 2004 data were abnormally low. Moreover, as set forth above in response to comments, three years of air quality data are used in determining attainment with the standard to allow for year-to-year variations in meteorology. In any event, delay of the redesignation is not necessary because the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Flint, Benzie County, Cass County, Huron County, and Mason County areas are all in attainment of the 8-hour ozone standard and have otherwise met all applicable requirements for redesignation. For the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas, attainment was achieved at the end of the 2004 ozone monitoring season, when each of the areas attained the ozone standard with quality assured 2002–2004 monitoring data. Since that time, MDEQ has collected and reported quality assured monitoring data for 2005 and 2006, resulting in three 3-year periods of monitored attainment. For the Flint, Muskegon, Benton Harbor, and Cass County areas, attainment was achieved at the end of the 2005 ozone monitoring season, when each of the areas attained the ozone standard with quality assured 2003–2005 monitoring data. Since that time, MDEQ has collected and reported quality assured monitoring data for 2006, resulting in two 3-year periods of monitored attainment. Furthermore, as demonstrated in Michigan's maintenance plans, VOC and NO_X emissions will continue to decline through 2018, further decreasing peak ozone levels and maintaining attainment of the ozone standard. MDEQ has met all of the criteria for redesignation contained in the CAA; therefore EPA has no basis for delaying approval of the State's request.

(8) *Comment:* For the Mason County ozone monitor, MDEQ discounted the 8-hour average value of 0.089 ppm, recorded on June 17, which was the 3rd highest 8-hour average for 2006. This change caused the 4th highest value to drop from 0.083 ppm to 0.076 ppm. The reason given for discounting monitoring data recorded on June 17 at the Mason County ozone monitor was that the shelter temperature exceeded acceptable limits due to a faulty air conditioner. Obviously, such failures skew samples results since the ozone is no doubt highest when high temperatures also prevail. Certainly, days discounted that are among the four highest are much more significant than those below it. Thus, it seems there should be a mechanism for documenting discounted days amongst the four highest for any monitor and the reason for discounting the data.

Response: EPA has established specific quality assurance criteria for the collection of ambient data. One of these criteria, stated in Part 1, Section 7.1.2 of the EPA's ''Quality Assurance Handbook for Air Pollution Measurement Systems,'' is that ozone analyzers must be operated within a specific temperature range (20 °C to 30 °C). This temperature range is set because the instruments have been tested and qualified in this range of temperatures. Establishing a range of operating temperature ensures that the instrument's reported concentrations do not drift from actual concentration; therefore, when the temperature exceeds this range, data are no longer considered to have met the quality objectives and are considered missing for regulatory data calculations.

In the EPA Air Quality Database (AQS), each hour has an ozone value and can be flagged for a variety of quality assurance reasons, including the shelter temperature being out of acceptable range. If the hourly value is flagged, then that hour is not used in the computation of the maximum 8-hour average. Every eight-hour average must have at least 6 hours of valid hourly values, otherwise it is assigned the value of missing. An ozone monitoring day is counted as a valid ozone monitoring day if at least 18 of the 24 possible 8-hour average periods are available, or the daily maximum 8-hour average concentration is greater than 0.08 ppm. Invalid days count against the design value completeness criteria; *i.e.*, 75% per year and 90% over three years.

MDEQ appropriately flagged its hourly ozone concentrations in the AQS database when the monitoring shelter temperature exceeded 30 ° C and they correctly calculated the daily and annual statistics according to the EPA's ''Guideline on Data Handling Conventions for the 8-hour Ozone NAAQS.'' Furthermore, regardless of whether 0.083 ppm or 0.076 ppm is used as the 4th highest 8-hour average for 2006, the area is monitoring attainment of the 8-hour ozone NAAQS for the 2004–2006 period.

(9) *Comment:* June 17 was in the top four highest days at 20 out of 28 other Michigan sites for 2006. The Little River Band of Ottawa Indians operates an ozone monitor in Manistee County, which is the closest one to Mason

County's monitor. The tribal monitor has a 4th highest 8-hour average of 0.083 ppm for 2006 as did Mason's before the removal of the June 17 reading. Could data from the tribal monitor be used to supplement missing data at the Mason County monitor?

Response: As explained in EPA's ''Guideline on Data Handling Conventions for the 8-hour Ozone NAAQS,'' in certain situations, credit can be given toward meeting the 75% minimum data completeness requirement for days with monitoring data that would have had low ozone concentrations. However, as long as a site meets the 75% minimum data completeness requirement in a given year, EPA does not require that data substitution from nearby monitors occur for days that are missing data. The Mason County monitoring site meets the 75% requirement in 2006, so there is no requirement to assess nearby monitors on days with missing data. Also, as noted above, regardless of whether 0.083 ppm or 0.076 ppm is used as the 4th highest 8-hour average for 2006, the area is monitoring attainment of the 8-hour ozone NAAQS for the 2004–2006 period.

(10) *Comment:* For the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas, Michigan used emissions data from 1999 and 2002 to show that the improvement in air quality was due to permanent and enforceable reductions in emissions. Why would the state choose a time period the EPA used to designate the area nonattainment?

Response: In developing an attainment inventory, Michigan could have chosen any of the years that the areas were monitoring attainment of the standard. Michigan developed the redesignation request based on ambient monitoring for the 2002–2004 time period showing that the areas had attained the NAAQS. (The areas have continued to monitor attainment for the 2003–2005 and 2004–2006 time periods.) It would have been acceptable for MDEQ to choose any of the three years, 2002, 2003, or 2004, as the year for the attainment inventory. (Because the areas continue to attain the NAAQS, 2005 or 2006 would also have been acceptable attainment years.) Michigan had developed a detailed emissions inventory for 2002 in support of regional modeling efforts, and chose this year for its attainment inventory. As discussed in more detail in the proposed rule (71 FR 70921), MDEQ demonstrated emissions reductions from 1999 to 2002 and detailed permanent and enforceable control measures over this time period that were responsible for the reduction in emissions. If Michigan had chosen a later year for its attainment inventory, it could have documented an even greater reduction in emissions, as the state has documented increasing emissions reductions from 2002 through 2018. Between 2002 and 2006, these areas, as well as areas upwind, have experienced further reductions in motor vehicle emissions due to the implementation of the NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, the NO_X SIP call required large reductions in NO_X, beginning in 2004, for both Michigan and upwind areas. The emission reductions from all of these programs are permanent and enforceable.

(11) *Comment:* Air quality monitoring data for the Grand Rapids area shows an upward trend from 1997 through 2003. Why did EPA analyze 2002 emissions data to show the area has put on controls, when monitoring data indicates air quality problems?

Response: Considering monitoring data from 1999 through 2006, which covers the time period that the Grand Rapids area is using to demonstrate monitored attainment with the standard, there are year to year variations, but overall ozone levels appear to be declining. The fact that the area has continued to monitor attainment of the standard for the three most recent three-year periods supports this view. As noted above, in response to Comment 10, Michigan could have chosen for its attainment inventory any of the years that the area was monitoring attainment of the standard. The state chose 2002 as the attainment year and documented permanent and enforceable control measures which were responsible for the reduction in emissions over the 1999–2002 time period. Table 5 set forth in the proposal (17 FR 70922, 70924) shows that the Grand Rapids area reduced VOC emissions by 9,949 tpy (18%) and NO_X emissions by 20,276 tpy (28%). Had the state chosen a later attainment year, an even greater reduction in emissions could have been shown, as the state has documented increasing emissions reductions from 2002 through 2018. In addition to the emissions reductions documented in Table 5 of the proposal, subsequent emissions reductions in later years were obtained from the NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, heavy-duty diesel engine standards, and the NO_X SIP call. Upwind areas have also experienced emissions reductions from these programs. See Response to Comment 10, above.

(12) *Comment:* Levels of ozone, particulate matter and other pollutants remain unacceptably high. EPA should require Michigan to move toward policies which improve air quality and pressure the Chicago, Illinois and Gary, Indiana areas to reduce pollution, which is transported to Michigan.

Response: Under section 109 of the CAA, EPA is charged with promulgating NAAQS for criteria pollutants (including ozone and particulate matter) at levels protective of public health and welfare. EPA promulgated NAAQS for 8-hour ozone on July 18, 1997 (62 FR 38856). The Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Flint, Benzie County, Cass County, Huron County, and Mason County areas have demonstrated attainment of the 8-hour ozone standard. It should be noted that while this action does not relate to particulate matter, all of these areas are designated as attainment for particulate matter as well.

This rule is a redesignation action that is designed to determine whether an area has met the requirements for redesignation to attainment for 8-hour ozone. Considerations of how to address issues of transport from upwind areas not related to the current redesignation action are not relevant for purposes of this action. As discussed elsewhere in responses to comments, Sections 126 and 110(a)(2)(D) remain available as mechanisms to address transport problems regardless of whether an area has been redesignated to attainment.

It should be noted, however, that considerable progress has been made in reducing transported pollution. EPA has adopted and implemented the NO_X SIP call, which has significantly reduced NO_X emissions throughout the eastern half of the United States. In Michigan, Illinois, and Indiana alone, the NO_X SIP call has been responsible for a reduction in ozone season NO_X emissions in excess of 196,400 tons between 2000 and 2004. Other Federal measures including the NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards continue to be implemented and should result in reductions in upwind emissions. In addition, EPA finalized the Clean Air Interstate Rule (CAIR) on May 12, 2005. CAIR is designed to achieve large reductions of sulfur dioxide (SO_2) and/or NO_X emissions across 28 eastern states and the District of Columbia and specifically addresses the transported

pollution from upwind states that affects downwind air quality problems. (Illinois, Indiana, Wisconsin and Michigan are all subject to CAIR.) SO_2 and NO_X contribute to the formation of fine particles and NO_X contributes to the formation of ground-level ozone.

(13) *Comment:* A commentor notes that EPA's 8-hour ozone designation Web site lists the 2001–2003 design value for the Grand Rapids area as 0.089 ppm. The commentor states that the design value for the area should be 0.090 ppm, based on the Jennison monitor.

Response: Yearly 4th high 8-hour ozone averages at the Jennison monitor for the years 2001–2003 are 0.086, 0.093, and 0.090 ppm, respectively. Using the calculation procedures described in 40 CFR Part 50, Appendix I, which call for truncating after the third decimal place, rather than rounding, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, *i.e.*, the design value, is 0.089 ppm.

(14) *Comment:* Considering the 4th highest 8-hour average for each year for each monitor in the Grand Rapids-Muskegon-Holland Consolidated Statistical Area, rather than the design value, long term trends show a regional air quality pattern of elevated and violating ozone concentrations.

Response: It should be noted that the commentor is citing three separate nonattainment areas as if they were one entity. The Grand Rapids and Muskegon areas are monitoring attainment of the 8-hour ozone NAAQS and EPA has proposed to approve Michigan's requests to redesignate these areas to attainment. The Allegan County area (Holland) continues to monitor violations of the 8-hour ozone standard. Michigan has not requested that the Allegan County area be redesignated and this area is not addressed in this rulemaking.

That being said, as discussed above, neither the CAA nor EPA's interpretation of CAA requirements in policy memoranda provide for using monitoring data trends or statistical analyses as criteria for ascertaining attainment for purposes of redesignation. Section 107(d)(3)(E) of the CAA allows for redesignation provided that, among other things, the Administrator determines that the area has attained the applicable NAAQS. As described in detail in the proposed rules, the Grand Rapids and Muskegon areas are monitoring attainment of the 8-hour ozone NAAQS.

Furthermore, maintenance plans for Grand Rapids and Muskegon project maintenance of the standard through 2018. For Grand Rapids, the maintenance plan shows that the area will maintain the standard with emissions reductions of 27% and 63% for VOC and NO_X, respectively, between 2002 and 2018. For Muskegon, the maintenance plan shows that the area will maintain the standard with emissions reductions of 19% and 31% for VOC and NO_X, respectively, between 2005 and 2018. See 71 FR 70925 and 72 FR 707. Moreover, as described above in responses to comments, continuing reductions in emissions from upwind areas will further contribute to maintenance of the standard.

(15) *Comment:* EPA granted Michigan's requests to be exempt from NO_X RACT regulation requirements when NO_X has been pointedly and repeatedly implicated in the ozone formation process around Lake Michigan. Based on regional modeling performed by the Lake Michigan Air Directors Consortium, EPA should retract all NO_X waiver requests involving the areas until such time that the associated NO_X control measures are shown to be completely ineffective at addressing ozone air quality improvement in all areas impacted by those emissions.

Response: EPA approved section 182(f) NO_X waivers for the Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Benzie County, Huron County, and Mason County areas on June 6, 2006 (71 FR 32448). The issuance of NO_X waivers for these areas is not at issue in this rulemaking. This comment would have more appropriately been submitted in response to the proposal to grant these waivers. The comment is not relevant to this redesignation action.

(16) *Comment:* There is not now any guarantee that a regional program will be adopted and implemented because areas in Region 5 are being allowed to be redesignated without viable maintenance plans that acknowledge the need for a comprehensive regional plan.

Response: The role of a redesignation action is to address air quality and regulatory requirements in an individual nonattainment area, and not to serve as a mechanism to address regional air quality issues. As noted above, MDEQ has included in its maintenance plans, control measures which the state has the authority to adopt and enforce. EPA has reviewed these maintenance plans and found that they provide for maintenance of the ozone standard in accordance with sections 175A and 107(d)(3)(E). MDEQ does not have the authority to adopt and enforce measures to control sources located in other states. Neither does it have the authority to unilaterally compel other states to participate in the adoption and implementation of a regional control program. It would be inappropriate for the State to include in its maintenance plans contingency measures that it could neither adopt nor enforce.

That being said, the redesignation of areas does not prohibit states from working together to ensure regional attainment and maintenance of the NAAQS. Indeed, it is in the states' best interest to do so. Section 110(a)(2)(D)(i) of the CAA requires states to include in their SIPs adequate provisions to prohibit any source or emissions activity within the state from emitting any air pollutant in amounts which will ''contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.* * *'' The participation by states in multi-state regional planning facilitates the evaluation of states' responsibilities regarding this section of the CAA and promotes a cohesive plan for regional attainment and maintenance of the NAAQS. In fact, Michigan continues to participate in regional planning efforts through the Lake Michigan Air Director's Consortium.

Redesignation of an area does not insulate it from the requirements or protection of section 110(a)(2)(D). Section 126 is also available to states to petition for redress if sources in an upwind state contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in the state. See prior responses to comments.

In addition, as noted in prior responses to comments, regional emissions reductions due to the NO_X SIP call, CAIR, and other regulations including the NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards will result in continued improvement in air quality throughout the region.

(17) *Comment:* There are not new controls on the books that will provide for demonstrated permanent air quality improvement by the expected attainment dates of 2007, 2009 and 2010.

Response: The Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Flint, Benzie County, Cass County, Huron County, and Mason County areas are all monitoring attainment of the 8-hour ozone NAAQS. Therefore, future attainment dates are irrelevant to the

redesignation. Moreover, as discussed in the proposals, 71 FR 70921 (December 7, 2006) and 72 FR 704–705 (January 8, 2007), Michigan has shown that the improvement in air quality is due to permanent and enforceable emissions reductions. Emission reductions from within the areas as well as regional reductions from upwind areas are responsible for attainment. Reductions in VOC and NO_X emissions have occurred in Michigan, as well as in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: The NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In compliance with EPA's NO_X SIP call, Michigan developed rules to control NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. Illinois and Indiana have also adopted and implemented regulations to comply with the NO_X SIP call which have resulted in a reduction in NO_X emissions. While Wisconsin was not subject to the NO_X SIP call, the state has adopted NO_X regulations to meet rate of progress requirements. The emission reductions from all of these programs are permanent and enforceable. Furthermore, MDEQ's maintenance plans show continued reductions in ozone precursor emissions through 2018. EPA believes that the maintenance plans meet the requirements of sections 175A and 107(d)(3)(E). Future emissions reductions can be expected both in Michigan and in upwind areas from programs including the NLEV program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, heavy-duty diesel engine standards, clean air non-road diesel rule and CAIR.

(18) *Comment:* The string of 4 monitors going into and downwind of the heart of the Grand Rapids metro area depends on the Holland (Allegan County) site being the lakeshore site. There is no lakeshore monitor in Ottawa County. If there were, it would clearly indicate ozone values closer to the levels monitored in the adjacent county north (Muskegon) or the adjacent county south (Allegan).

Response: It should be noted that the ozone monitor in Muskegon County (the Muskegon area) is monitoring attainment of the ozone NAAQS; the monitor located in Allegan County is not. Michigan has not requested that the Allegan County area be redesignated and this area is not addressed in this rulemaking. EPA believes that the monitoring network for the Grand Rapids area satisfies the requirements of 40 CFR part 58, appendix D. The EPA has approved the Grand Rapids monitoring network as adequate and has not required a lakeshore monitor in Ottawa County. There is no basis on which to speculate what such a monitor would record if it were in place, and it would be inappropriate for EPA to use such speculation as a criterion for redesignation. As discussed above, section 107(d)(3)(E) of the CAA allows for redesignation provided that, among other things, the Administrator determines that the area has attained the applicable NAAQS. An area is considered to be in attainment of the 8-hour ozone standard if the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year does not exceed 0.084 ppm. The Grand Rapids area is monitoring attainment of the 8-hour ozone NAAQS, based on that criterion.

(19) *Comment:* EPA had previously approved Michigan's ozone monitoring plans with the understanding that the Grand Rapids metro area would be designated as a single area including all 4 counties (Allegan, Kent, Ottawa and Muskegon counties). All the counties contain urbanized areas and their metropolitan connections are clear in the driving/commuting and emissions statistics. EPA understood this when proposing the 8-hour designations based on the full metropolitan area. EPA utilized technical justifications for splitting the area into separate pieces that do not fit the criteria required in EPA's standing guidance. However, if the EPA feels the need to split the areas, then it should require a more protective monitor location for a monitor in Ottawa County. If classification is based on either the Holland or Muskegon site, then that test is met.

Response: There is nothing in the record that supports the commentor's allegation. Michigan has been operating an approved monitoring network over the entire time period in question. EPA believes that the monitoring network for the Grand Rapids area satisfies the requirements of 40 CFR part 58, appendix D. EPA designated and classified the four counties as three separate areas (Grand Rapids, Muskegon, and Allegan County) under both the 1-hour ozone standard (56 FR 56778, November 6, 1991) and the 8-hour ozone standard (69 FR 23910–23911, April 30, 2004), based on the ozone monitoring data for each respective area. The 8-hour ozone designations, including area boundaries and the underlying monitoring data used for such designations, are not at issue in this rulemaking. Comments regarding the appropriateness of the 8-hour ozone designations would have more appropriately been submitted during the designation process. They are not relevant to a rulemaking on the redesignation of the area.

Grand Rapids has an approved adequate monitoring network, and the monitors in Muskegon and Allegan are not relevant to making an attainment determination for Grand Rapids.

(20) *Comment:* The two-year average of fourth high 8-hour averages for Muskegon exceeds 0.085 ppm. According to the maintenance plan for Muskegon, MDEQ has six months from the close of the ozone season to review the circumstances leading to the high monitored values. This review should be completed by April 1, 2007. Will the review be completed by this date? What has MDEQ concluded?

Response: Neither the CAA nor EPA policy memoranda contain the requirement that a state begin to implement a maintenance plan that has not yet been approved into the SIP, much less establish its implementation as a criterion for redesignation. The State will be required to implement its maintenance plans when they are approved as revisions to the SIP.

III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making determinations that the Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, Benzie County, Cass County, Huron County, and Mason County areas have attained the 8-hour ozone NAAQS. EPA is also approving the State's requests to change the legal designations of the Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benzie County, Cass County, Huron County, and Mason County areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also approving as SIP revisions Michigan's maintenance plans for the areas (such approval being one of the CAA criteria for redesignation to attainment status). Additionally, EPA is finding adequate and approving for transportation conformity purposes the 2018 MVEBs for the Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benzie County, Cass County, Huron County, and Mason County areas. With respect to EPA's approval of the redesignation of each area and approval of its associated maintenance plan and

MVEB's, EPA construes such actions as separate and independent from EPA's actions concerning the other areas subject to this rulemaking. Thus any challenge to EPA's action with respect to an individual area shall not affect EPA's actions with respect to the other areas named in this notice.

EPA finds that there is good cause for these actions to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for these 8-hour ozone nonattainment areas. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's actions do not result in the relaxation of control measures on existing sources and therefore will not cause emissions increases from those sources. Overall, emissions in the areas are projected to decline following redesignation. Thus, today's actions will not have disproportionately high or adverse effects on any communities in the area, including minority and low-income communities

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1505).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' EPA has consulted with interested tribes in Michigan to discuss the redesignation process and the impact of a change in designation status of these areas on the tribes. Accordingly, EPA has complied with Executive Order 13175 to the extent that it applies to the action.

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2))

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 8, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

■ 2. Section 52.1170(e) is amended by adding entries to the table to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	* * * *	*	*	*
8-hour ozone maintenance plan.	Grand Rapids (Kent and Ottawa Counties), Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), Benzie County, Huron County, and Mason County.	5/9/06, 5/26/06, and 8/25/06	5/16/2007	
8-hour ozone maintenance plan.	Flint (Genesee and Lapeer Counties), Muskegon (Muskegon County), Benton Harbor (Berrien County), and Cass County.	6/13/06, 8/25/06, and 11/30/06	5/16/2007	

■ 3. Section 52.1174 is amended by adding paragraphs (x) and (y) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(x) Approval—On May 9, 2006, Michigan submitted requests to redesignate the Grand Rapids (Kent and Ottawa Counties), Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), Benzie County, Huron County, and Mason County areas to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The State supplemented its redesignation requests on May 26, 2006, and August 25, 2006. As part of its redesignation requests, the State submitted maintenance plans as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit subsequent maintenance plan revisions in 8 years as required by the Clean Air Act. If monitors in any of these areas record a violation of the 8-hour ozone NAAQS, Michigan will adopt and implement one or more contingency measures. The list of possible contingency measures includes: Lower Reid vapor pressure gasoline requirements; reduced volatile organic compound (VOC) content in architectural, industrial, and maintenance coatings rule; auto body refinisher self-certification audit program; reduced VOC degreasing rule; transit improvements; diesel retrofit program; reduced VOC content in commercial and consumer products rule; and a program to reduce idling. Also included in the Michigan's submittal were motor vehicle emission budgets (MVEBs) for use to determine transportation conformity in the areas. For the Grand Rapids area, the 2018 MVEBs are 40.70 tpd for VOC and 97.87 tpd for oxides of nitrogen (NO_X). For the Kalamazoo-Battle Creek area, the 2018 MVEBs are 29.67 tpd for VOC and 54.36 tpd for NO_X. For the Lansing-East Lansing area, the 2018 MVEBs are 28.32 tpd for VOC and 53.07 tpd for NO_X. For the Benzie County area, the 2018 MVEBs are 2.24 tpd for VOC and 1.99 tpd for NO_X. For the Huron County area, the 2018 MVEBs are 2.34 tpd for VOC and 7.53 tpd for NO_X. For the Mason County area, the 2018 MVEBs are 1.81 tpd for VOC and 2.99 tpd for NO_X.

(y) Approval—On June 13, 2006, Michigan submitted requests to redesignate the Flint (Genesee and Lapeer Counties), Muskegon (Muskegon County), Benton Harbor (Berrien County), and Cass County areas to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The State supplemented its redesignation requests on August 25, 2006, and November 30, 2006. As part of its redesignation requests, the State

submitted maintenance plans as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit subsequent maintenance plan revisions in 8 years as required by the Clean Air Act. If monitors in any of these areas record a violation of the 8-hour ozone NAAQS, Michigan will adopt and implement one or more contingency measures. The list of possible contingency measures includes: Lower Reid vapor pressure gasoline requirements; reduced volatile organic compound (VOC) content in architectural, industrial, and maintenance coatings rule; auto body refinisher self-certification audit program; reduced VOC degreasing rule; transit improvements; diesel retrofit program; reduced VOC content in commercial and consumer products rule; and a program to reduce idling. Also included in the Michigan's submittal were motor vehicle emission budgets (MVEBs) for use to determine transportation conformity in the areas. For the Flint area, the 2018 MVEBs are 25.68 tpd for VOC and 37.99 tpd for oxides of nitrogen (NO_X). For the Muskegon area, the 2018 MVEBs are 6.67 tpd for VOC and 11.00 tpd for NO_X. For the Benton Harbor area, the 2018 MVEBs are 9.16 tpd for VOC and 15.19 tpd for NO_X. For the Cass County area, the 2018 MVEBs are 2.76 tpd for VOC and 3.40 tpd for NO_X.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.323 is amended by revising the entries for Benton Harbor, MI: Berrien County; Benzie Co., MI: Benzie County; Cass County, MI:, Cass County; Flint, MI: Genesee and Lapeer Counties; Grand Rapids, MI: Kent and Ottawa Counties; Huron Co., MI: Huron County; Kalamazoo-Battle Creek, MI: Calhoun, Kalamazoo, and Van Buren Counties; Lansing-East Lansing, MI: Clinton Eaton, and Ingham Counties; Mason Co., MI, Mason County; Muskegon, MI: Muskegon County in the table entitled ''Michigan—Ozone (8-Hour Standard)'' to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Benton Harbor, MI:				
Berrien County	5/16/2007	Attainment.		
Benzie County, MI:				
Benzie County	5/16/2007	Attainment.		
* * *	*	*	*	*
Cass County, MI:				
Cass County	5/16/2007	Attainment.		
* * *	*	*	*	*
Flint, MI:				
Genesee County	5/16/2007	Attainment.		
Lapeer County.				
Grand Rapids, MI:				
Kent County	5/16/2007	Attainment.		
Ottawa County.				
* * *	*	*	*	*
Huron County, MI:				
Huron County	5/16/2007	Attainment.		
* * *	*	*	*	*
Kalamazoo-Battle Creek, MI:				
Calhoun County	5/16/2007	Attainment.		
Kalamazoo County.				
Van Buren County.				
Lansing-East Lansing, MI:				
Clinton County	5/16/2007	Attainment.		
Eaton County.				
Ingham County.				
Mason County, MI:				
Mason County	5/16/2007	Attainment.		
* * *	*	*	*	*
Muskegon, MI:				
Muskegon County	5/16/2007	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. E7–9289 Filed 5–15–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–HQ–OAR–2006–0085; FRL–8315–2]

RIN 2060–AN84

Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates revisions to the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission Standards for Hazardous Air Pollutants for Source Categories to allow for extensions to the deadline imposed for source owners and operators to conduct an initial or subsequent performance test required by applicable regulations. The General Provisions do not currently provide for extensions of the deadlines for conducting performance tests.

DATES: This final rule is effective on May 16, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0085. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Ms. Lula Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards, (C304–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2910; fax number: (919) 541–4511; e-mail address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to any source whose owner or operator is required to conduct performance testing to demonstrate compliance with applicable standards under the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission Standards for Hazardous Air Pollutants for Source Categories.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

C. Public Comments on Proposed Rule

The EPA received 15 sets of public comments on the proposed amendments to the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission Standards for Hazardous Air Pollutants for Source Categories during the 90-day comment period. These comments were submitted to the rulemaking docket. The EPA has carefully considered these comments in developing the final amendments. Summaries of the comments and EPA's responses are contained in this preamble.

D. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by July 16, 2007. Only those objections to this final rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

E. How is this document organized?

The information presented in this preamble is organized as follows:

II. Summary of Final Action and Rationale

A. What are the requirements?

The final rule allows source owners or operators, in the event of a force majeure, to petition the Administrator for an extension of the deadline(s) by which they are required to conduct an initial or subsequent performance test required by applicable regulations. Performance tests required as a result of enforcement orders or enforcement actions are not covered by this rule because enforcement agreements contain their own force majeure provisions. A ''force majeure'' is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

If an affected owner or operator intends to assert a claim that a force majeure is about to occur, occurs, or has occurred, the owner or operator must notify the Administrator, in writing, as soon as practicable following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or caused a delay in testing beyond the regulatory deadline. The owner or operator must provide a written description of the event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The test must be conducted as soon as practicable after the force majeure occurs.

The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable. If an owner or operator misses its performance test deadline due to a force majeure event, and the request for an extension is subsequently approved, the owner or operator will not be held in violation for failure to conduct the performance test within the prescribed regulatory timeframe.

B. Why did we amend the requirements for performance tests in the General Provisions?

We recognize that there may be circumstances beyond a source owner's or operator's control constituting a force majeure event that could cause an owner or operator to be unable to conduct performance tests before the regulatory deadline. We developed this rule to provide a mechanism for consideration of these force majeure events and granting of extensions where warranted. Under current rules, a source owner or operator who is unable to comply with performance testing requirements within the allotted timeframe due to a force majeure is regarded as being in violation and subject to enforcement action. As a matter of policy, EPA often exercises enforcement discretion regarding such violations. However, where circumstances beyond the control of the source owner or operator constituting a force majeure prevent the performance of timely performance tests, we believe that it is appropriate to provide an opportunity to such owners and operators to make good faith demonstrations and obtain extensions of the performance testing deadline where approved by the Administrator in appropriate circumstances.

III. Responses to Comments

A. Clarification of Approving Authority

Comment: Five commenters requested that we clarify or define the approving authority.

Response: We inadvertently used two terms (Administrator and delegated agency) in the proposed rule. In 40 CFR Part 60 of the proposed rule, we stated that the owner or operator shall notify the Administrator of force majeure events, and in 40 CFR Parts 61 and 63 of the proposed rule, we stated that the owner or operator shall notify the delegated agency. We have replaced the term delegated agency with the term Administrator in 40 CFR Parts 61 and 63 of the final rule to be consistent with (1) the term (Administrator) used in 40 CFR Part 60 and (2) the term (Administrator) used in Parts 61 and 63 of the General Provisions that this final rule amends. Nonetheless, we believe that it may be appropriate for the Administrator to assign the responsibility of evaluating and approving or denying requests for extensions to performance test deadlines due to force majeure events to a duly delegated agency according to applicable procedures.

B. Force Majeure Concept

Comment: Six commenters stated that they thought the scope of the rule was too narrow and that circumstances beyond what they believed were covered by the definition of ''force majeure'' warranted similar extensions (e.g., pandemics, facility shutdowns, and process constraints that result in non-representative testing conditions).

Response: The proposed rule is not as narrow as indicated by commenters. Force majeure is defined as ''an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation.'' Although we provide examples of events that could meet this definition (i.e., acts of nature, acts of war or terrorism, and equipment failure or safety hazards beyond the control of the affected facility), this list is not exhaustive. The focus of the rule and this definition is an event beyond the control of the affected facility. Similarly, two definitions of ''force majeure'' in dictionaries are ''an unexpected or uncontrollable event'' (The American Heritage Dictionary) and ''an event or effect that cannot be reasonably anticipated or controlled'' (Merriam-Webster's Online Dictionary). Thus, any event beyond the control of the affected facility may qualify for the extension. We can neither provide an exhaustive list of all of the possible events that may qualify as ''force majeure'' under this rule, nor determine whether the generic additional examples provided in the public comments would or would not qualify under all circumstances. The Administrator will exercise his or her discretion when considering requests for extensions to performance test deadlines due to ''force majeure'' events.

Comment: Six commenters requested that we expand the scope of the rule to allow the force majeure concept to justify extensions for additional regulatory requirements, such as monitoring, recordkeeping, reporting, maintenance, and inspections.

Response: The purpose of this rulemaking is to address requests for extensions to performance test deadlines. Expanding the force majeure concept to include additional regulatory requirements is beyond the scope of the proposed rule. Therefore, the final rule covers petitions for extensions to performance test deadlines only.

C. Notifications

Comment: Four commenters requested that we allow simplified notifications. One of these commenters requested that we allow a simplified notification initially followed by the timeline for completing the performance test later. In addition, one of these commenters requested that we allow initial notification to the Administrator in non-written formats followed by written communication later since during force majeure events means of communication may be disrupted. Two of these commenters stated that the Administrator should not require listing of every applicable test and rule for an entire facility.

Response: We agree that phased notification may be appropriate in certain circumstances. For example, if a source owner or operator is unable to determine a date by which the performance test will be conducted at the time of the force majeure event, verbal notification to the Administrator that the original performance test deadline will be missed followed by written communication describing the details required by the rule may be appropriate. Also, if a force majeure event results in widespread power outages and no U.S. Postal mail service, an initial oral notification followed by written notification may be necessary. The written notification required by this rule does not include a listing of every applicable test and rule for an entire facility. The rule requires the source owner or operator to provide to the permitting authority a written description of the force majeure event, a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure event, a written description of the measures taken or to be taken to minimize the delay, and a date (as soon as practicable following the force majeure event) by which the owner or operator proposes to conduct the performance test.

Comment: Two commenters requested that we clarify that written notification includes letters, faxes, e-mails, web-based submittals, etc.

Response: We agree that written notification regarding force majeure events can be provided to the Administrator in such written formats as those listed above.

Comment: Three commenters expressed the concern that a legitimate request for an extension may be denied based on the timing of the request. For example, source owners and operators may not be aware of an anticipated hurricane until one day prior to the event. Another commenter suggested that we require source owners and operators to notify the Administrator verbally within five days of the force majeure event and in writing within twenty-one days of the event.

Response: We proposed that the owner or operator would notify the Administrator, in writing, as soon as practicable following the date the owner or operator first knew, or should have known that the event may cause or caused a delay in testing beyond the regulatory deadline. We do not believe that it is appropriate to establish specific timelines in the rule. The existence of a force majeure event typically necessitates flexibility. Thus, the final rule states that the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

D. Approvals

Comment: Four commenters suggested that we add a provision that allows requests for extensions to be automatically granted if the Administrator does not respond within a specific timeframe. Three of the four commenters suggested that the Administrator be given thirty days to respond. Two commenters are concerned that owners and operators will be subject to enforcement actions until their requests for extensions are approved.

Response: We disagree with allowing automatic approvals and with requiring the Administrator to respond within 30 days. We do not believe that it is appropriate to place this burden on the Administrator since the Administrator may also have been affected by the force majeure event. We believe that it is appropriate to require the Administrator to notify the owner or operator of approval or disapproval of the request for an extension as soon as practicable. Furthermore, if an owner or operator misses its performance test deadline due to a force majeure event, and the request for an extension is subsequently approved, the owner or operator will not be held in violation for failure to conduct the performance test within the prescribed regulatory timeframe.

Comment: Two commenters stated that circumstances, such as during acts of war, mandatory evacuations, or energy and supply restrictions, applying for an extension to a performance test deadline should be self-implementing.

Response: We believe that the Administrator should have the discretion to determine if a request for an extension warrants approval and that self-implementation is not appropriate. During any situation that a source owner or operator believes qualifies as a force majeure event, the owner or operator must submit a request to the Administrator that includes the required information, such as a written description of the force majeure event, a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure event, a description of the measures taken to minimize the delay, and a date (as soon as practicable) by which the performance test is expected to occur. The Administrator will notify the owner or operator of approval or disapproval of the request for an extension as soon as practicable. Furthermore, if an owner or operator misses its performance test deadline due to a force majeure event, and the request for an extension is subsequently approved, the owner or operator will not be held in violation for failure to conduct the performance test within the prescribed regulatory timeframe.

Comment: One commenter requested that we add the following statement to the rule (i.e., ''the Administrator shall approve a reasonable request for extension of the performance test deadline.'')

Response: We do not believe that it is necessary to add this statement to the rule. The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request as soon as practicable.

Comment: Two commenters requested that EPA affirm that we already have the

authority to approve requests for extensions to performance tests.

Response: We do not have this authority except through enforcement discretion. Therefore, we developed this rule to grant this authority.

Comment: Three commenters believe that the Administrator should have the authority to issue blanket approvals for a designated area in advance of a force majeuere event.

Response: We do not believe that blanket approvals are necessary since approvals for requests to extend performance test deadlines can be granted after the force majeure event occurs. Furthermore, we believe that requests to extend performance test deadlines should be reviewed and considered on a case-by-case basis because situations and circumstances may vary among facilities affected by the same force majeure event.

E. Title V Deviations

Comment: Four commenters requested that we specify that extensions granted under this rule are not Title V deviations.

Response: We agree that extensions granted under this rule are not Title V deviations since the original performance test deadline will not be applicable once a request for an extension has been approved. However, where the Administrator has not yet issued a decision on a request for an extension under today's rule, the failure to conduct the performance test within the originally prescribed timeframe is a deviation and should be reported as such.

F. Other Comments

Comment: One commenter requested that we expand the concept of force majeure to cover regulations for other environmental media, such as water regulations.

Response: We proposed that this rule address air regulations only and are maintaining that approach in the final rule.

Comment: One commenter requested that denials for extensions be administratively appealable.

Response: The commenter did not explain why this recommendation is appropriate or how it could be implemented. Therefore, we are not adopting this recommendation.

Comment: One commenter requested that we delete the word ''strictly'' from the statement ''Until an extension of the performance test deadline has been approved under * * *, the owner or operator of the affected facility remains strictly subject to the requirements of this part.''

Response: We disagree with the request to remove the word ''strictly'' because it is intended to emphasize that this rule is one of strict liability.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The final rule requires a written notification only if a plant owner or operator needs an extension of a performance test deadline due to certain rare events, such as acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility. Since EPA believes such events will be rare, the projected cost and hour burden will be minimal.

The increased annual average reporting burden for this collection (averaged over the first 3 years of the ICR) is estimated to total 6 labor hours per year at a cost of $377.52. This includes one response per year from six respondents for an average of 1 hour per response. No capital/startup costs or operation and maintenance costs are associated with the final reporting requirements. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Extensions to deadlines for conducting performance tests will provide flexibility to small entities and reduce the burden on them by providing them an opportunity for additional time to comply with performance test deadlines during force majeure events. We expect force majeure events to be rare since these events include circumstances such as, acts of nature, acts of war or terrorism, and equipment failure or safety hazard beyond the control of the affected facility.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The maximum total annual cost of this final rule for any year has been estimated to be less than $435.00. Thus, today's final rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule requires source owners and operators to provide a written notification to the Agency only if an extension to a performance test deadline is necessary due to rare force majeure events. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule requirements will not supercede State regulations that are more stringent. In addition, the final rule requires a written notification only if a plant owner or operator needs an extension of a performance test deadline due to certain rare events, such as acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility. Since EPA believes such events will be rare, the projected cost and hour burden will be minimal. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications as specified in Executive Order 13175. This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule does not affect the underlying control requirements established by the applicable standards but only the timeframe associated with performance testing in limited circumstances.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. New test methods are not being proposed in this rulemaking, but EPA is allowing for extensions of the regulatory deadlines by which owners or operators are required to conduct performance tests when a force majeure is about to occur, occurs, or has occurred which prevents owners or operators from testing within

the regulatory deadline. Therefore, NTTAA does not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 16, 2007.

List of Subjects in 40 CFR Parts 60, 61, and 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 10, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, parts 60, 61, and 63 of the Code of Federal Regulations are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

■ 2. Section 60.2 is amended by adding, in alphabetical order, a definition for ''Force majeure'' to read as follows:

§ 60.2 Definitions.

* * * * *

Force majeure means, for purposes of § 60.8, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

* * * * *

■ 3. Section 60.8 is amended by revising paragraph (a) to read as follows:

§ 60.8 Performance tests.

(a) Except as specified in paragraphs (a)(1),(a)(2), (a)(3), and (a)(4) of this section, within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, or at such other times specified by this part, and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

(1) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(2) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(3) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(4) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(1), (2), and (3) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

* * * * *

PART 61—[AMENDED]

■ 4. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

■ 5. Section 61.02 is amended by adding, in alphabetical order, a definition for ''Force majeure'' to read as follows:

§ 61.02 Definitions.

* * * * *

Force majeure means, for purposes of § 61.13, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

* * * * *

■ 6. Section 61.13 is amended as follows:

■ a. By removing ''; or'' at the end of paragraph (a)(1) and adding in its place a period.

■ b. By revising paragraph (a) introductory text.

■ c. By adding paragraphs (a)(3) through (a)(6).

§ 61.13 Emission tests and waiver of emission tests.

(a) Except as provided in paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section, if required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source:

* * * * *

(3) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraphs (a)(1) or (a)(2) of this section or beyond a deadline established pursuant to the requirements under paragraph (b) of this section, but the notification must occur

before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(4) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(5) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(6) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(3), (a)(4), and (a)(5) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

* * * * *

PART 63—[AMENDED]

■ 7. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

■ 8. Section 63.2 is amended by adding, in alphabetical order, a definition for ''Force majeure'' to read as follows:

§ 63.2 Definitions.

* * * * *

Force majeure means, for purposes of § 63.7, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

* * * * *

■ 9. Section 63.7 is amended by revising paragraphs (a)(2) introductory text and (a)(2)(ix) and by adding paragraph (a)(4) to read as follows:

§ 63.7 Performance testing requirements.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

* * * * *

(ix) Except as provided in paragraph (a)(4) of this section, when an emission standard promulgated under this part is more stringent than the standard proposed (see § 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

* * * * *

(4) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure:

(i) The owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraph (a)(2) or (a)(3) of this section, or elsewhere in this part, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(ii) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(iii) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(iv) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

* * * * *

■ 10. Section 63.91 is amended by adding paragraph (g)(1)(i)(O) to read as follows:

§ 63.91 Criteria for straight delegation and criteria common to all approval options.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(O) Section 63.7(a)(4), Extension of Performance Test Deadline

* * * * *

[FR Doc. E7–9407 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2006–00949; [FRL–8315–1]

RIN 2050–AG36

Oil Pollution Prevention; Non-Transportation Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today extending the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. This action allows the Agency time to promulgate further revisions to the SPCC rule before

owners and operators are required to prepare or amend, and implement their SPCC Plans. EPA expects to propose further revisions to the SPCC rule later this year.

EFFECTIVE DATE: This final rule is effective May 16, 2007.

ADDRESSES: The public docket for this final rule, Docket ID No. EPA–HQ–OPA–2006–0949, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202–566–1744, and the telephone number to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rule, contact either Vanessa Rodriguez at (202) 564–7913 (*rodriguez.vannessa@epa.gov*) or Mark W. Howard at (202) 564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. Authority

33 U.S.C. 1251 *et seq.;* 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

II. Background

On July 17, 2002, the Agency published a final rule that amended the SPCC regulations (*see* 67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for preparing amending, and implementing SPCC Plans. The original compliance dates were extended on January 9, 2003 (*see* 68 FR 1348), again on April 17, 2003 (*see* 68 FR 18890), a third time on August 11, 2004 (*see* 69 FR 48794), and a fourth time on February 17, 2006 (*see* 71 FR 77266).[1]

Under the current provisions in § 112.3(a)(1), the owner or operator of a facility (other than a farm) that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan and fully implement it by October 31, 2007, while the owner or operator of a facility (other than a farm) that came into operation after August 16, 2002, but before October 31, 2007, must prepare and fully implement an SPCC Plan on or before October 31, 2007. Under the current provision in § 112.3(b)(1), the owner or operator of a facility (other than a farm) that becomes operational after October 31, 2007 must prepare and implement an SPCC Plan before beginning operations. In addition, § 112.3(c) requires onshore and offshore mobile facilities to prepare or amend and implement their SPCC Plans on or before October 31, 2007.

On December 26, 2006, EPA finalized a set of SPCC rule amendments that address certain targeted areas of the SPCC requirements based on issues and concerns raised by the regulated community (71 FR 77266). As highlighted in the EPA Regulatory Agenda and the 2005 OMB report on ''Regulatory Reform of the U.S. Manufacturing Sector,'' EPA is considering further amendments to address other areas where regulatory reform may be appropriate. For these additional areas, the Agency expects to issue a proposed rule later this year. Areas where regulatory reform may be appropriate include, but are not limited to, oil and natural gas exploration and production facilities, farms, and qualified facilities. Because the Agency was concerned that it would not be able to propose and promulgate such regulatory amendments before the current October 31, 2007 compliance date, EPA believed it appropriate to provide a further extension of the compliance date, and thus, proposed an extension to the compliance dates on December 26, 2006 (71 FR 77357). This notice finalizes that proposal.

III. Extension of Compliance Dates

This rule extends the dates in § 112.3(a), (b), and (c) by which a facility must prepare or amend and implement its SPCC Plan. As a result of the revisions in § 112.3(a)(1), an owner or operator of a facility (other than a farm) that was in operation on or before August 16, 2002 must make any necessary amendments to his SPCC Plan, and implement that Plan, on or before July 1, 2009. This will allow the owner or operator time to prepare or amend and implement the SPCC Plan in accordance with the July 2002 (67 FR 47042, July 17, 2002) and December 2006 (71 FR 77266, December 26, 2006) amendments, and any subsequent modifications to the SPCC requirements that are promulgated based on amendments that the EPA intends to propose later this year. EPA expects to promulgate such a final rule by the summer of 2008. The facility owner/operator must continue to maintain his existing SPCC Plan until he amends and fully implements the Plan to comply with the revised requirements. Similarly, an owner or operator of a facility (other than a farm) that came into operation after August 16, 2002 through July 1, 2009 must prepare and implement an SPCC Plan on or before July 1, 2009.

Under the revised § 112.3(b)(1), the owner or operator of a facility regulated under the SPCC rule that becomes operational after July 1, 2009 must prepare and implement an SPCC Plan before beginning operations.

This rule similarly extends the compliance dates in § 112.3(c) for mobile facilities. Under this rule, an owner or operator of a mobile facility must prepare or amend and implement an SPCC Plan on or before July 1, 2009, or before beginning operations if operations begin after July 1, 2009.

The Agency believes that such an extension of the compliance dates is appropriate for several reasons. First, this extension will allow those potentially affected in the regulated community an opportunity to make changes to their facilities and to their SPCC Plans necessary to comply with any revised requirements promulgated based on the amendments expected to be proposed later this year, and finalized thereafter, rather than with the existing requirements.

Further, the Agency believes that this extension of the compliance dates will also provide the owner or operator of a facility the time to fully understand the regulatory amendments offered by revisions to the 2002 SPCC rule promulgated on December 26, 2006 (71

[1] The compliance date for farms is the date that establishes SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of the rule.

FR 77266) and amendments expected to be promulgated by the summer of 2008.[2]

In addition, the Agency intends to issue revisions to the *SPCC Guidance for Regional Inspectors*, to address both the December 2006 revisions and the revisions expected to be proposed later this year. The guidance document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on SPCC-related issues. The guidance is available to both the owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's Web site at *http://www.epa.gov/oilspill*. The Agency believes that this extension will provide the regulated community the opportunity to take advantage of the material presented in the revised guidance before preparing or amending their SPCC Plans.

IV. Response to Comments

The Agency received 28 submissions on the proposed rule (71 FR 77357, December 26, 2006). The discussion below summarizes and responds to the major comments received. A more complete response to comments document can be found in the docket for this rulemaking, EPA–HQ–OPA–2006–0949.

The majority of commenters (nineteen) supported the proposed extension of the compliance date and generally agreed that the extension would allow the Agency time to promulgate further regulatory revisions. Many commenters also noted that the proposed extension would allow the industries potentially affected by those revisions an opportunity to make the necessary changes to their facilities and to their SPCC Plans to comply with the revised requirements expected to be proposed in 2007 and later finalized.

A second group of commenters (nine) supported the proposed extension, but suggested alternate schedules, arguing that EPA's proposed compliance date was premature given the Agency's intent to propose further changes to the SPCC rule in 2007. Several schedules were suggested:

- Tie the compliance dates to promulgation of the rule finalizing the amendments to be proposed in 2007 or, in the event that EPA decides not to go forward with further modifications to the rule, 12 months after publication of a notice in the **Federal Register** terminating that rulemaking.
- Provide an extension of 18 months from the promulgation of the final amendments to the SPCC rule, thereby providing adequate time for a regulated facility to implement the amendments (i.e., review amendments, develop and/or modify existing Plans, and comply with any final changes to the rule or guidance).
- Set the date for preparing and amending the SPCC Plans to one year following publication of the final amendments, maintaining the six-month separation between the dates for amending and implementing Plans.
- Set a Plan preparation compliance date of July 1, 2009, and an implementation compliance date of January 1, 2010, thereby allowing a facility owner or operator adequate time after Plan amendment to make changes at his facility, properly train employees on the amended Plan requirements, and allow for full implementation of the amended Plan requirements.

The Agency disagrees with those commenters who suggested an alternate schedule to either set uncertain compliance dates in § 112.3 or to further extend the time period for the compliance dates. While the Agency recognizes that a regulated facility owner or operator needs adequate time after EPA takes final action on the proposed amendments to the SPCC Plan requirements to amend or prepare an SPCC Plan and to implement it, we also believe that one year is a reasonable period of time to allow for preparing, amending, and implementing an SPCC Plan following final Agency action on the proposed amendments to the SPCC rule. The Agency intends to develop and publish **Federal Register** notices proposing and then taking final action on further amendments to the SPCC regulatory requirements as soon as possible. At this time, based on the information at hand, the Agency believes that extending the compliance dates in § 112.3 until July 1, 2009 will allow owners and operators an adequate interval to comply with the SPCC rule.

The Agency also disagrees with commenters who requested a revised date for implementing amended SPCC Plans to include a six-month period after the July 1, 2009 date for Plan amendment. For the reasons discussed above, the Agency believes that the July 1, 2009 date for both Plan amendment and implementation is more than adequate. The effect of the Agency's decision to eliminate the gap between Plan preparation or amendment and implementation was to provide additional time for the owner or operator to prepare or amend the SPCC Plan. The Agency believes that this approach, which allows an owner or operator flexibility in scheduling Plan development or amendment, makes sense given that an owner or operator is not required to submit his SPCC Plans to the Agency. It also simplifies the burden for an owner or operator of an SPCC facility by establishing a single compliance date, while providing additional time for Plan development.

One commenter opposed a compliance date extension for this regulation, arguing that it was not effectively addressing the problems with the regulation, and that the best way to do this would be by completing a complete re-write of the rule. First, the Agency disagrees with the commenter that the SPCC regulation needs to be re-written. Rather, the Agency believes that it is in the best interest of the regulated community to address areas of confusion that arose after promulgation of the 2002 amendments, and that promulgating a proposal intended to clarify and tailor requirements, particularly for small businesses, and making revisions to the SPCC *Guidance for Regional Inspectors* available to the regulated community will ultimately result in a more effective and complete implementation of the SPCC regulation and in enhanced environmental protection. The Agency also believes that the regulated community needs the additional time allowed by the extension in order to better take advantage of the guidance and any further amendments that are promulgated and that the benefits of this extension outweigh the concerns raised by the opposing commenter. Furthermore, a facility owner or operator subject to the SPCC rule continues to be required to ensure that operations are conducted in a manner that safeguards human health and the environment by preventing oil discharges to navigable waters and adjoining shorelines and by effectively responding in the event of an accidental discharge.

V. Applicability to Farms

In the December 2006 final rule amendments, EPA finalized an extension of the compliance dates for the owner or operator of a farm (71 FR 77266), as defined in § 112.2, to prepare or amend and implement the farm's SPCC Plan until the effective date of a rule that establishes SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of the SPCC

[2] As stated in the rule, a facility owner or operator must maintain its existing Plans. A facility owner or operator who wants to take advantage of the 2002 and 2006 regulatory changes may do so, but he will need to modify his existing Plan accordingly.

rule. The Agency has been conducting additional information collection and analyses to determine if differentiated SPCC requirements may be appropriate for farms. Specifically, the Agency has been working with the U.S. Department of Agriculture, as well as the farming community, to collect data that would more accurately characterize oil storage and handling at these facilities. These efforts will allow the Agency to better focus on priorities where substantial environmental improvements can be obtained. The Agency will propose the new compliance dates for farms in a separate **Federal Register** notice. Today's rule does not affect this extended compliance date for farms.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action has been determined to be a ''significant regulatory action.'' This final rule would extend the compliance dates in § 112.3, but would have no other substantive effect. However, because of its interconnection with the related SPCC rule amendments finalized on December 26, 2006 (71 FR 77266) which was a significant action under the terms of Executive Order 12866, and because of the upcoming proposal to further amend the SPCC requirements, this action was submitted to OMB for review.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and oil exploration and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, the Agency concludes that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on the small entities subject to the rule.

This rule would defer the regulatory burden for small entities by extending the compliance dates in § 112.3. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with a significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As was explained above, the effect of this action would be to reduce burden and costs for owners and operators of all facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the

prevention of oil discharges to navigable waters. EPA recognizes that some States have more stringent requirements (56 FR 54612, (October 22, 1991). This rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule would not significantly or uniquely affect communities of Indian Tribal governments. Thus Executive Order 13175 does not apply to this rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe my have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTAA does not apply.

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 16, 2007.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 10, 2007

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

■ 2. Section 112.3 is amended by revising paragraphs (a)(1), (b)(2), and (c) to read as follows:

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a)(1) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but most amend it, if necessary to ensure compliance with this part, and implement the Plan no later than July 1, 2009. If your onshore or offshore facility becomes operational after August 16, 2002, through July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before July 1, 2009.

* * * * *

(b)(1) If you are the owner or operator of an onshore or offshore facility that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before July 1, 2009. If your onshore or offshore mobile facility becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility

is in a fixed (non-transportation) operating mode.

* * * * *

[FR Doc. 07–2404 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0121; FRL–7713–1]

Pythium Oligandrum DV 74; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Pythium oligandrum* DV 74 on food crops. Biopreparaty Co. Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pythium oligandrum* DV 74.

DATES: This regulation is effective May 16, 2007. Objections and requests for hearings must be received on or before July 16, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-EPA-0121. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*,or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg., 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Tessa Milofsky, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0455; e-mail address: *milofsky.tessa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-EPA-0121 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 16, 2007.

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- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
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II. Background and Statutory Findings

In the **Federal Register** of May 25, 2005 (70 FR 30105) (FRL–7713–1). EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F6877) by Biopreparaty, Co. Ltd. Tylisovska I, Prague 6, Czech Republic. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement *Pythium*

oligandrum DV 74. This notice included a summary of the petition prepared by the petitioner Biopreparaty Co. Ltd.

One comment was received from a private citizen opposing the ''production or selling'' of *Pythium oligandrum* DV 74. The commentor further stated that it was their wish that no exemptions be issued and that no tolerances should be approved. The Agency understands the commentor's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408 of the FFDCA EPA is required to establish pesticide tolerances or exemptions where persons seeking such exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The commentor has not provided the Agency with a specific rationale or additional information pertaining to the legal standards in FFDCA section 408 for opposing the establishment of a tolerance exemption for *Pythium oligandrum* DV 74. In the absence of any additional information of a factual nature, the Agency can not effectively respond to the commentor's disagreement with the Agency's decision.

Another comment was received that supported the registration. The commentator stated that ''*Pythium oligandrum* appears to be an unusually effective (in its rapidity of action) and exceptionally safe (in terms of mammalian toxicity) crop protection product.''

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Acute Oral Toxicity and Pathogenicity (Master Record Identification numbers 464107-02 and 464109-03; Data Request 152-30; OPPTS Harmonize Guideline. 885.3050)

A guideline acute oral toxicity study was carried out in 2001 using mice. Ten mice (five males, five females) were given a total dose of 5,000 milligrams/kilogram (mg/kg) *Pythium oligandrum* DV 74 and no adverse effects were seen in the mice which were observed for 14 days after dosing. The test substance was rated *Toxicity Category IV*.

B. Acute Dermal Toxicity (Master Record Identification numbers 464109-04, 464107-02; OPPTS Harmonize Guideline 870.1200)

A guideline acute dermal toxicity study was conducted using rats. The dermal LD_{50} for males, females, and combined was greater than 5,000 mg/kg body wt. *Pythium oligandrum* DV 74 test substance was rated *Toxicity Category IV*.

C. Acute Inhalation Toxicity (Master Record Identification number 464109-05; OPPTS Harmonize Guideline 870.1300)

In a four-hour acute inhalation toxicity study using rats, a limit dose (5 mg/L) of *Pythium oligandrum* DV 74 produced no mortality nor adverse effects, and no gross abnormalities were seen at necropsy 14 days later. Although the MMD was 7.45 and µm, approximately 68% of the particles were ≤3.75 µm. The acute inhalation LC_{50} for males, females, and combined was >5 mg/L for a 4 hour exposure. The test substance is *Toxicity Category IV*.

D. Acute Pulmonary Toxicity/Pathogenicity-Waiver Granted (Master Record Identification number 464109-10; OPPTS Harmonize Guideline 885.3150)

In a four-hour acute inhalation toxicity study using rats, a limit dose (5 mg/L) of *Pythium oligandrum* DV 74 produced no mortality or adverse effects, and no gross abnormalities were seen at necropsy 14 days later. Although the MMD was 7.45 µm, approximately 68% of the particles were ≤3.75 µm. The acute inhalation LC_{50} for males, females, and combined was >5 mg/L for a 4 hour exposure. The test substance is classified as *Toxicity Category IV*. Infectivity testing was waived for this study based on the results of the growth temperature study which showed no growth on plant-based growth media at or above 37° C, and no growth at any temperature on animal tissue-based growth media.

E. Acute Injection Tocity/Pathogenicity (Master Record Identification numbers 465823-01, 467542-01,464109-10, and 469901-01; OPPTS Harmonize Guideline 885.3200)

An acute injection toxicity/pathogenicity study was conducted using rats. Storage, stability data showed that after Batch No. 150405 was stored for approximately 9 months, of $1.3x10^6$ oospores/g active ingredient 80.5% were viable after 120 hours incubation, giving $1.1x10^6$ cfu/g - however, this study lists Batch No. 150405 as containing 10^7 granules/g, so viability would then be only 11%. Based on the data submitted, *Pythium oligandrum* DV 74 does not appear toxic nor pathogenic to rats when dosed at $2.9x10^4$ oospores/animal – although no attempts to isolate viable organisms prior to testing, or from test animals after inoculation, were made. Therefore, infectivity cannot be assessed in the study, initially rated not toxic nor pathogenic. In addition, there were discrepancies with characterization of the test substance. However, infectivity testing was waived for this study, based on the results of the growth temperature study which showed no growth on plant-based growth media at or above 37° C, and no growth at any temperature on animal tissue-based growth media.

F. Primary Dermal Irritation (Master Record Identification numbers 464605-02 and 464107-02; OPPTS Harmonize Guideline 870.2500)

An acute dermal irritation study was conducted using rabbits. Very slight erythema was noted on the skin of three rabbits one hour after patch removal, with clearance on two rabbits by 24 hours and on one rabbit by 48 hours. The primary irritation index was 0.3. Technical DV 74 was essentially nonirritating; the test substance was rated *Toxicity Category IV*.

G. Acute Eye Irritation (Master Record Identification number 464109-06;OPPTS Harmonize Guideline 870.2400)

An acute eye irritation study was conducted using rabbits. No corneal opacity nor iritis was observed during the study. Positive conjunctival irritation (score 2) was noted on 2 rabbits 1 hour after *Pythium oligandrum* DV 74 instillation with resolution by 48 hours. The maximumaverage score was 6.7 at 24 hours after test material instillation. The test substance is *Toxicity Category III*.

H. Skin sensitization-Waiver Granted (Master Record Identification number 464109-10; OPPTS Harmonize Guideline 870.2600)

A guideline acute dermal toxicity study was conducted using rats. The dermal LD_{50} for males, females, and combined was greater than 5,000 mg/kg body wt. *Pythium oligandrum* DV 74 and rated *Toxicity Category IV*. An acute dermal irritation study was conducted using rabbits. Very slight erythema was noted on 3/3 rabbits one hour after patch removal, with clearance on two rabbits by 24 hours and on one rabbit by 48 hours. The primary irritation index was 0.3. Technical DV 74 was essentially nonirritating and rated *Toxicity Caterogy IV*. In addition, *Pythium oligandrum* occurs naturally in a variety of soil types over a wide range of environmental conditions. Although application of *Pythium oligandrum* DV 74 to seeds, foliage, or soil will likely temporarily increase its concentration in the environment, the population is expected to subside to normal levels, because the organism does not thrive in the absence of sufficient nutrients. A search of the public literature found no reports of *Pythium oligandrum* having adverse effects in humans or other mammals. The only known biological effects of *Pythium oligandrum* are parasitic effects on fungal species and stimulation of resistance to parasitic infection in plants. Neither the mechanism of the mycoparasitic action nor the stimulation of plant resistance is associated with adverse effects in mammals. *Pythium oligandrum* DV 74 is the active ingredient in various over-the-counter products sold in Europe, including a mouthwash, a bath additive and a skin cream. These products have been on the market in parts of the EU since 1999 with no reported adverse effects. The lack of any reported sensitization effects from repeated dermal exposure to the consumer products suggests that *Pythium oligandrum* is not a dermal sensitizer. To reduce exposure to this active ingredient from its pesticide use, the agricultural use label requires that applicators and handlers wear a long-sleeved shirt and long pants, waterproof gloves, and shoes plus socks.

I. Pathogenicity and Infectivity (Master Record Identification numbers 469901-01 and 02)

Pythium oligandrum DV 74 is primarily a fungal hyperparasite that exhibits limited growth on plant-based media and no growth on animal tissue-based media. In addition, its growth tapers off as temperature approaches normal human body temperature of 37° C and there is no growth at or above this temperature. Therefore, infectivity testing is not possible. This information supports waivers for infectivity testing in the acute oral, acute dermal, acute inhalation, and injection exposure studies.

J. Subchronic, Chronic Toxicity and Oncogenicity

Based on the data generated in accordance with Tier I data requirements (40 CFR 158.740(c)), Tier II tests (Guidelines 152B-40 through 152B-49), which include acute oral, acute inhalation, subchronic oral, acute intraperitoneal/intracerebral, primary dermal, primary eye, immune response, teratogenicity, virulence enhancement, and mammalian mutagenicity were not required. Tier III tests (Guidelines 152-50 through 53), which include chronic testing, oncogenicity testing, mutagenicity, and teratogenicity were also not required.

K. Effects on the Endocrine System

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' *Pythium oligandrum* is not a known endocrine disruptor nor is it related to any class of known endocrine disruptors. Consequently, endocrine-related concerns did not adversely impact the Agency's safety finding for *Pythium oligandrum*.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Due to the proposed use of *Pythium oligandrum* on food crops, fungal residues may be present on agricultural commodities. However, negligible to no risk is expected for the general population, including infants and children, because *Pythium oligandrum* demonstrated no pathogenicity nor acute oral toxicity at the maximum doses tested.

1. *Food*. Due to the proposed use of *Pythium oligandrum* on food crops, fungal residues may be present on agricultural commodities. However, negligible to no risk is expected for the general population, including infants and children, because *Pythium oligandrum* demonstrated no pathogenicity or oral toxicity at the maximum doses tested.

2. *Drinking water exposure. Pythium oligandrum* does not thrive in aquatic environments and there are no aquatic use sites for the pesticide. Accordingly, application of this pesticide to approved use sites is not expected to increase drinking water exposure to *Pythium oligandrum*. Furthermore, any *Pythium oligandrum* that might be consumed through drinking water would pose negligible to the general population, including infants and children, due to the pesticide's low toxicity classification.

B. Other Non-Occupational Exposure

Pythium oligandrum will be applied to agricultural fields, turf and professional landscapes, and in home gardens. Although some applications may be made near residential areas, no harm would be expected to result from exposure to *Pythium oligandrum* due to its low toxicity classification.

1.*Dermal exposure*. Dermal exposure is limited by use of the required PPE and REI in occupational settings, and residential users are advised to avoid

skin contact and to wash any exposed skin or clothing.

2. *Inhalation exposure*. The greatest likelihood of inhalation exposure would occur in an occupational setting, among mixers/loaders and applicators. However, as demonstrated in the acute pulmonary toxicity/pathogenicity test, *Pythium oligandrum* is not infective, pathogenic, or toxic to mammals. Despite the benign nature of the active ingredient, the agency requires that all workers exposed to microbial pesticides must wear a dust/mist filtering respirator. As such, the risks anticipated for inhalation exposure are minimal.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effect of exposure to *Pythium oligandrum* and to other substances that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. As demonstrated in Unit III.A., *Pythium oligandrum* is not toxic or pathogenic to mammals, and only minimally irritating to eyes. Consequently, no cumulative effects from the residues of this product with other related microbial pesticides are anticipated.

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of *Pythium oligandrum* due to its use as a microbial pest control agent. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed in UnitIII.A., *Pythium oligandrum* is not toxic or pathogenic to mammals, and only minimally irritating in an eye exposure study. Accordingly, exempting *Pythium oligandrum* from the requirement of a tolerance is considered safe and poses no significant risks.

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which often are referred to as uncertainty factors, are incorporated into EPA risk assessment either directly or through the use of a margin of exposure analysis or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. Actual exposures to adults and children through diet are expected to be several orders of magnitude less than the doses used in the toxicity and pathogenicity tests referenced in Unit III. Thus, the Agency has determined that an additional margin of safety for infants and children is unnecessary.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' *Pythium oligandrum* is not a known endocrine disruptor nor is it related to any class of known endocrine disruptors. Consequently, endocrine-related concerns did not adversely impact the Agency's safety finding for *Pythium oligandrum*.

B. Analytical Method(s)

The acute oral toxicity and pathogenicity findings discussed in Unit III demonstrate that the active ingredient does not pose a dietary risk. Nevertheless, the Agency has concluded that for the analysis of the pesticide itself, microbiological and biochemical methods exist and are acceptable forthe enforcement purposes for product identity of *Pythium oligandrum* DV 74. Other appropriate methods are required for quality control to assure that product characterization, the control of human pathogens, and other unintentional metabolites or ingredients are within regulatory limits, and to ascertain storage stability and viability of the pesticidal active ingredient.

C. Codex Maximum Residue Level

There is no established Codex maximum residue level for residues of *Pythium oligandrum* DV 74.

VIII. Conclusions

The results of the studies discussed are sufficient to comply with the requirements of FQPA. They support an exemption from the requirement of tolerance for residues of *Pythium oligandrum* DV 74, on treated food of food commodities. In addition, the Agency is of the opinion that, if the microbial active ingredient is used as allowed, aggregate and cumulative exposures are not likely to pose any undue hazard to the U.S. population of adult, children, and infant humans. Therefore, an exemption from the requirement of tolerance is granted in response to pesticide petition 4F6877.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination*

with Indian Tribal Governments (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1275 is added to subpart D to read as follows:

§ 180.1275 Pythium; Exception from the requirement of a tolerance.

An exemption from the requirement of tolerance is established on all food/feed commodities, for residues of *pythium oligandrum* DV 74 when the pesticide is used on food crops.

[FR Doc. E7–9298 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0800; FRL–8128–2]

Chlorantraniliprole; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of chlorantraniliprole in or on apple and apple, wet pomace, celery, cucumber, head and leaf lettuce, pear, pepper, spinach, squash, tomato and watermelon commodities. DuPont Crop Protection requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerances will expire on May 1, 2010.

DATES: This regulation is effective May 16, 2007. Objections and requests for hearings must be received on or before July 16, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION)**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0800. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Docket, in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Kable Bo Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703 306-0415; e-mail address: *kable.davis@epa.gov*.

SUPPLEMENTARY INFORMATION:

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- Animal production (NAICS code 112).
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This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions discussed above. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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C. Can I File an Objection or Hearing Request?

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• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of October 13, 2006 (71 FR 198) (FRL–8096–2), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6G7089) by E I. DuPont de Nemours and Company, DuPont Crop Protection, 1090 Elkton Road, Newark, Delaware 19711. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on apple at 0.3 parts per million (ppm), apple, celery at 7.0 ppm, cucumber at 0.09 ppm, lettuce, head at 4.0 ppm, lettuce, leaf at 7.5 ppm, pear at 0.30 ppm, pepper at 0.50 ppm, spinach at 13.0 ppm, squash at 0.25 ppm, tomato at 0.30 ppm and watermelon at 0.20 ppm. This notice referenced a summary of the petition prepared by E.I. DuPont de Nemours and Company, DuPont Crop Protection, the registrant, which has been included in the public docket. Several comments were received from a private citizen on objecting to pesticide body load, IR-4 profiteering, animal testing, and other related matters. The Agency has received these same comments from this commenter on numerous previous occasions. Refer to the **Federal Register** of June 30, 2005 (70 FR 37686) (FRL–7718–3), January 7, 2005 (70 FR 1354) (FRL–7691–4), and October 29, 2004 69 FR 63096 for the Agency's response to these objections.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 352-EUP-170, and 353-EUP-171, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of these temporary tolerances will protect the public health. Therefore, these temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits. The tolerances will expire on May 1, 2010.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA , for tolerances for residues of chlorantraniliprole on apple at 0.25 ppm, apple, wet pomace at 0.60 ppm, celery at 7.0 ppm, cucumber at 0.10 ppm, lettuce, head at 4.0 ppm, lettuce, leaf at 8.0 ppm, pear at 0.30 ppm, pepper at 0.50 ppm, spinach at 13.0 ppm, squash at 0.40 ppm, tomato at 0.30 ppm and watermelon at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by chlorantraniliprole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at www.regulations.gov in Docket ID EPA–HQ–OPP–2006–0800.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for chlorantraniliprole used for human risk assessment can be found at www.regulations.gov in Docket ID EPA–HQ–OPP–2006–0800.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Chlorantraniliprole is a new active ingredient and tolerances have not been established. A risk assessment was conducted by EPA to assess dietary exposures from chlorantraniliprole in food (from crops treated under the experimental permits) as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Acute dietary (food and drinking water) exposure assessments were conducted for chlorantraniliprole using the Dietary Exposure Evaluation Model (DEEM-FCID), and reflect the proposed uses on apple, celery, cucumber, head and leaf lettuce, pear, pepper, spinach, squash, tomato and watermelon crops. The modeled exposure estimates are based on tolerance level residues (calculated using the maximum residue level calculator) assuming 100% of crops are treated and surface water estimated drinking water concentrations (EDWCs) (because surface water EDWCs were higher than ground water EDWCs).

ii. *Chronic exposure*. Chronic dietary (food and drinking water) exposure assessments were conducted for chlorantraniliprole using the DEEM-FCID), and reflect the proposed uses on apple, celery, cucumber, head and leaf lettuce, pear, pepper, spinach, squash, tomato and watermelon crops. The modeled exposure estimates are based on tolerance level residues (calculated using the maximum residue level calculator) assuming 100% of crops are treated and surface water estimated drinking water concentrations (EDWCs) (because surface water EDWCs were higher than ground water EDWCs).

iii. *Cancer*. Long-term exposure is not expected to result from use under these Experimental Use Permits (EUPs). The submitted subchronic studies in mice, dog and rats, and the in vivo and in vitro genotoxicity studies, identified no tumors or preneoplastic foci, nor did they identify mutagenic concern. Therefore, the expected short/intermediate-term exposure resulting from the EUPs does not indicate a concern for carcinogenicity.

2. *Dietary exposure from drinking water*. Clorantraniliprole is an unregistered chemical, thus, the Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for chlorantraniliprole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of chlorantraniliprole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the EPA's pesticide root zone model/exposure analysis modeling system (PRZM/EXAMS) and screening concentration in groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of chlorantraniliprole for acute exposures are estimated to be 14 ppb for surface water and 0.38 ppb for ground water. The EECs for chronic exposures are estimated to be 2.3 ppb for surface water and 0.38 for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlorantraniliprole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and'' other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to chlorantraniliprole and any other substances and chlorantraniliprole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorantraniliprole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There were no effects on fetal growth or development up to the limit dose of 1,000 milligrams killogram day (mg/kg/day) in rats or rabbits. There were no treatment related effects on the numbers of litters, fetuses (live or dead), resorptions, sex ratio, or post-implantation loss. There were no effects on fetal body weights, skeletal ossification, and external, visceral, or skeletal malformations or variations.

3. *Conclusion*. Due to the following, the FQPA Safety Factor does not need to be retained at this time:

The toxicology database is complete for the characterization of potential prenatal and postnatal risks to infants and children. No susceptibility was identified in the toxicological data base, and there are no residual uncertainties re: prenatal and/or postnatal exposure (i.e., the developmental and reproduction studies report no adverse effects related to treatment ≥ 1,000 mg/kg/day limit dose). Therefore, a degree of concern analysis for prenatal and/or postnatal susceptibility is not necessary.

Highly conservative dietary (food and water) exposure estimates are at least 60,000 times lower than the highest

dose tested in the mammalian toxicity studies (at which no adverse observed effects were seen).

E. Aggregate Risks and Determination of Safety

1. *Acute/chronic risk*. Aggregating routes and/or pathways of exposure is not relevant, since no hazard was identified via any route of exposure in the EUP toxicology data base.

2. *Short/Intermediate-term risk*. Chlorantraniliprole is not registered for use on any sites that would result in short and intermediate residential exposure and therefore no risk assessment was conducted for this scenario.

3. *Aggregate cancer risk for U.S. population*. Long-term exposure is not expected to result from use under these EUPs. The submitted subchronic studies in mice, dog and rats, and the *in vivo* and *in vitro* genotoxicity studies, identified no tumors or preneoplastic foci, nor did they identify mutagenic concern.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to chlorantraniliprole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

LC/MS/MS methods are available for measuring chlorantraniliprole in plants and livestock. The registrant submitted an LC/MS/MS method for the determination of chlorantraniliprole in plants, and an LC/MS/MS method for the determination of chlorantraniliprole and its metabolites in livestock.

Adequate method and concurrent recovery data were provided for the plant LC/MS/MS method, and the fortification levels used in the method and concurrent validation are adequate to bracket the residue levels determined in the proposed crops. An analytical method for enforcing tolerances in livestock commodities is not germane to this EUP as tolerances in meat, milk, poultry and eggs are not required.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican MRLs for chlorantraniliprole.

C. Conditions

None.

V. Conclusion

Therefore, time-limited tolerances are established for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on apple at 0.25 ppm, apple, wet pomace at 0.60 ppm, celery at 7.0 ppm, cucumber at 0.10 ppm, lettuce, head at 4.0 ppm, lettuce, leaf at 8.0 ppm, pear at 0.30 ppm, pepper at 0.50 ppm, spinach at 13.0 ppm, squash at 0.40 ppm, tomato at 0.30 ppm and watermelon at 0.20 ppm. These tolerances will expire on May 1, 2010.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 2, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.628 is added to read as follows:

§180.628 Chlorantraniliprole; tolerances for residues.

(a) Tolerances are established for residues of the pesticide chlorantraniliprole (3-bromo-*N*-[4-chloro-2-methyl-6-

[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide) in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/revocation date
Apple	0.25	05/01/2010
Apple, wet pomace	0.60	05/01/2010
Celery	7.0	05/01/2010
Cucumber	0.10	05/01/2010
Lettuce, head	4.0	05/01/2010
Lettuce, leaf	8.0	05/01/2010
Pear	0.30	05/01/2010
Pepper	0.50	05/01/2010
Spinach	13.0	05/01/2010
Squash	0.40	05/01/2010
Tomato	0.30	05/01/2010
Watermelon	0.20	05/01/2010

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E7–9206 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0995; FRL–8120–2]

Pendimethalin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pendimethalin and its metabolite, 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on beans; beans, forage; beans, hay; and peas (except field peas) to replace the current tolerances for bean, lima, seed; bean, lima, succulent; bean, forage; bean, hay; and pea, succulent. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 16, 2007. Objections and requests for hearings must be received on or before July 16, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0995. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*,or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Philip V. Errico, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–6663; e-mail address: *errico.philip@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining

whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at*http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0995 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 16, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0995, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of January 24, 2007 (72 FR 3130) (FRL–8109–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7149) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.361 be amended by establishing a tolerance for combined residues of the herbicide, pendimethalin [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite, 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, in or on beans; beans, forage; beans, hay; and peas (except field peas) each at 0.1 parts per million (ppm). That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

These proposed tolerances seek to correct an inadvertent error made by EPA in 2001 when EPA amended the pendimethalin beans and peas tolerances following completion of the pendimethalin reregistration eligibility determination under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and FFDCA tolerance reassessment. (66 FR 63192, December 5, 2001). In an attempt to clarify the coverage of the then existing beans and peas tolerances, EPA mistakenly narrowed the scope of the existing tolerances. This action re-establishes the beans and peas tolerances with the same coverage that pre-dated the 2001 amendments and using the terms originally recommended by the tolerance reassessment decision. Specifically, the proposed amendments to the pendimethalin tolerance would replace the current tolerances for bean, lima, seed; bean, lima, succulent; bean, forage; bean, hay; with tolerances for beans; beans, forage; beans, hay and the current tolerance for pea, succulent with a tolerance for peas (except field peas). The terms beans and peas are defined under 40 CFR 180.1(g) to encompass bean and pea commodities not covered by the current tolerances.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of pendimethalin and its metabolite on beans; beans, forage; beans, hay; and peas (except field peas) each at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by pendimethalin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is

described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2006–0995 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for pendimethalin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 12, 2006 (71 FR 18628) (FRL–7770–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pendimethalin, EPA considered exposure under the petition for tolerances as well as all existing pendimethalin tolerances in (40 CFR 180.361). EPA assessed dietary exposures from pendimethalin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for pendimethalin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer*. Pendimethalin is classified ''Group C'', possible human carcinogen, chemical based on a statistically significant increased trend and pair-wise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. The Agency used a non-quantitative approach (i.e., non-linear, RfD approach) since mode of action studies are available that demonstrate that the thyroid tumors are due to a thyroid-pituitary imbalance, and also since pendimethalin was shown to be non-mutagenic in mammalian somatic cells and germ. The chronic risk assessment is considered to be protective of any cancer effects; therefore, a separate quantitative cancer aggregate risk assessment is not required.

iv. *Anticipated residue and percent crop treated (PCT) information*. Tolerance level residues were assumed for all food commodities with current and proposed pendimethalin tolerances, and it was assumed that all of the crops included in the analysis were treated (i.e. 100% crop treated).

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for pendimethalin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of pendimethalin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at*http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentrations in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of pendimethalin for peak exposures are estimated to be 39 parts per billion (ppb) for surface water and 0.024 ppb for ground water. The EECs for chronic exposures are estimated to be 4.8 ppb for surface water and 0.024 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 39 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pendimethalin is currently registered for the following residential non-dietary sites: Landscape, grounds plantings, ornamental crops, turf grass, and lawns. EPA assessed residential exposure using the following assumptions: Exposures are short-term in duration, and consist of dermal (for adults and children), and oral (hand-to-mouth, object-to-mouth, and soil ingestion, for children only). The Agency combines risk values resulting from separate exposure scenarios when it is likely they can occur simultaneously, based on the use-pattern and the behavior associated with the exposed population. The LOC for oral, dermal and inhalation exposure is an MOE of less than 300. The residential exposure estimate for adults, consisting of dermal exposure only, results in a total MOE of 740, and is therefore not of concern. The residential exposure for children results in a total MOE (dermal + oral) of 410 at an application rate of 2 lb ai/acre, and an MOE of 400 for an application rate of 3 lb ai/acre. Residential aggregate exposure is not of concern.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to

pendimethalin and any other substances and pendimethalin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pendimethalin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (10X) tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The database for pendimethalin does not indicate a potential for increased toxicological sensitivity from either prenatal or postnatal exposures.

3. *Conclusion*. In September 2006 we said the following: There was no evidence of qualitative or quantitative susceptibility in the submitted data. Additionally, exposure estimates are based on very conservative data and assumptions that will overstate exposure to pendimethalin. There is, however, a concern that perturbation of thyroid homeostasis may lead to hypothyroidism, and possibly result in adverse effects on the developing nervous system. Since thyroid toxicity parameters were not measured in the developmental toxicity studies, the Agency has requested a developmental thyroid assay be conducted to evaluate the impact of pendimethalin on thyroid hormones, structure, and/or thyroid hormone homeostasis during development. The Agency has retained the additional 10X FQPA safety factor in the form of a database uncertainty factor (UF[DB]) for the lack of the study, to be applied in determining pendimethalin risks.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk*. No toxic effects attributable to a single dose were identified for pendimethalin. Therefore, an acute risk assessment is not warranted for this chemical.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pendimethalin from food and water will utilize 26% of the cPAD for the population group children 1-2. Based the use pattern, chronic residential exposure to residues of pendimethalin is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pendimethalin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pendimethalin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 580 for adult males, 520 for adult females, 310 for children for an application rate of 2 lbs ai/acre to residential turf, and 300 for children for an application rate of 3 lbs ai/acre to residential turf.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Based on currently requested uses, there are no scenarios that are likely to result in intermediate-term exposure (30 to 180 days, continuous. Therefore, an intermediate-term risk assessment was not conducted.

5. *Aggregate cancer risk for U.S. population*. The Agency classifies pendimethalin as a ''Group C'' (possible human) cancinogen based on thyroid follicular cell adenomas in rats. A non-quantitative approach, non-linear RfD approach is used to assess the cancer risk using a chronic assessment, which is considerated protective of any cancer effects: Because exposure to pendimethalin does not exceed the chronic RfD, pendimethalin is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pendimethalin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Enforcement analytical methods using gas chromatography and an electron capture detector are available in the Pesticide Analytical Manual, Volume II.

B. International Residue Limits

There are no established or proposed Codex Maximum Residue Levles (MRLs) for pendimethalin residues. Therefore, there are no questions of compatibility with respect to Codex MRLs and U.S. tolerances.

C. Response to Comments

There were no responses to the Notice of Filing for the requested tolerance in beans and peas.

V. Conclusion

Therefore, the tolerance is established for combined residues of pendimethalin [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite, 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, in or on beans; beans, forage; beans, hay; and peas (except field peas) all at 0.1 ppm each.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply,*

Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 8, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.361 is amended by revising the tolerances for ''Bean, lima, seed''; ''Bean, lima, succulent''; ''Bean, forage''; ''Bean, hay''; and ''Pea, succulent'', which will be revoked due to an administrative error, with the entries to the table in paragraph (a) to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Beans	0.10
Beans, forage	0.10
Beans, hay	0.10
* * *	* *
Peas (except field peas)	0.10
* * *	* *

* * * * *

[FR Doc. E7–9428 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0160; FRL–8130–6]

Aspergillus flavus NRRL 21882 on Corn; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Aspergillus flavus* NRRL 21882 on corn when applied aerially once per season at the first sign of corn tasseling to reduce aflatoxin-producing *Aspergillus flavus*. Acta Group, 1203 Nineteenth St., NW., Suite 300, Washington, DC 20036–2401 on behalf of Circle One Global, Inc. One Arthur St. P.O. Box 28, Shellman, GA 39886–0028 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* NRRL 21882. The temporary tolerance exemption expires on May 2, 2009.

DATES: This regulation is effective May 16, 2007. Objections and requests for hearings must be received on or before June 15, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0160. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Section 5 of FIFRA and the regulations promulgated to carry out that provision of FIFRA (40 CFR part 172). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0160 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 16, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0160, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 21, 2007 (72 FR 13277–13279) (FRL–8117–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7121) by Acta Group, 1203 Nineteenth St., NW., Suite 300, Washington, DC 20036–2401 on behalf of Circle One Global, Inc. P.O. Box 28, Shellman, GA 39886–0028. The petition requested that 40 CFR part 180 be amended to include a temporary exemption from the requirement of a tolerance for residues of *Aspergillus flavus* NRRL 21882 on corn. This notice included a summary of the petition prepared by the petitioner Acta Group, on behalf of Circle One Global, Inc. No comments were received in response to the **Federal Register** Notice.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe '' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Aspergillus flavus NRRL 21882 is a non-aflatoxin-producing fungal active ingredient that will be used to displace the ubiquitous *Aspergillus flavus* group of microbes, many of which can produce aflatoxin, a potent carcinogen. The toxicological profile of this conditionally registered active ingredient has been previously described in the final rule of the **Federal Register** of June 30, 2004, (69 FR 39341) (FRL–7364–2). On the basis of those studies, the exemption from tolerance of *Aspergillus flavus* NRRL 21882, a non-aflatoxin-producing strain of *Aspergillus flavus*, on peanuts was established in 40 CFR 180.1254.

The acute toxicology oral studies placed *Aspergillus flavus* NRRL 21882 in Toxicity Category IV. This active ingredient was not toxic, infective or pathogenic to mammals on the basis of acute oral, pulmonary and intraperitoneal studies. That database supporting the exemption from tolerance on peanut also supports the proposed temporary exemption of this active ingredient on corn. For a summary of the studies and discussions of dietary and non-dietary, non-occupational dermal and inhalation exposures, as well as aggregate and cumulative, exposures, and potential endocrine effects refer to the aforesaid June 30, 2004 final rule. All studies met the safety standards of the Food Quality Protection Act of 1996. This pesticide has been used for more than a decade in experimental laboratory and field trials without any reports of adverse dermal irritation or hypersensitivity effects.

The petitioner is now requesting that those studies be also used as the basis to amend the tolerance exemption to include a temporary exemption from tolerance for *Aspergillus flavus* NRRL 21882 on corn during the Experimental Use Permit with EPA Registration Number (EPA Reg. No.) 75624–EUP–2. The proposed two-year, non-crop destruct Experimental Use Permit is for treatment of approximately 6,000 acres of corn grown for grain in Texas at ten or 20 pounds of the End-use Product (EP) aflaguard^{R} per acre.

The Agency has determined that the studies do support the proposed exemption from tolerance of *Aspergillus flavus* NRRL 21882 on corn. Summaries of the rationales for this determination may be found in the aforesaid **Federal Register** Final Rule of June 30, 2004. No further toxicological data are required for this temporary exemption from the requirement of a tolerance for *Aspergillus flavus* NRRL 21882 on corn. The applicant must, however, report any incidents of hypersensitivity, or any other adverse effects to comply with the requirements of Section 6(a)(2). Efficacy data to demonstrate that the pesticide does reduce aflatoxin-producing *Aspergillus flavus* colonies and, concomitantly, aflatoxin in corn, are required as part of the Experimental Use Permit.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. The aforesaid final rule for the exemption from tolerance for residues of *Aspergillus flavus* NRRL 21882 on peanut considered all studies submitted by the applicant and found them to be acceptable.

2. *Drinking water exposure*. Those data are also acceptable to demonstrate that the proposed use of *Aspergillus flavus* NRRL 21882 on corn will not harm the U.S. adult, infant and children population from dietary exposure, including food, and drinking water. Percolation through the soil and municipal treatment of drinking water are expected to preclude exposure of the US population, infants and children to residues of the pesticide.

B. Other Non-Occupational Exposure

1. *Dermal exposure*. Dermal non-occupational exposure is expected to be minimal to non-existent for the proposed use of *Aspergillus flavus* NRRL 21882 on corn. The pesticide is to be applied to agricultural sites not in the proximity of residential areas, schools, nursing homes or daycares.

2. *Inhalation exposure*. For the same reasons non-occupational inhalation exposure to *Aspergillus flavus* NRRL 21882 is expected to be minimal to non-existent.

V. Cumulative Effects

Another non-aflatoxin-producing strain of *Aspergillus flavus*, AF36, is registered, but not for use on corn. Cumulative effects of these strains are not expected to exceed the risk cup for the registered *Aspergillus flavus* strains, AF36 and NRRL 21882.

VI. Determination of Safety for U.S. Population, Infants and Children

Based on the previously evaluated data, it is not necessary to use a safety factor to determine safety to children June 30, 2004, (69 FR 39341).

VII. Other Considerations

A. Endocrine Disruptors

See **Federal Register**, June 30, 2004, (69 FR 39341).

B. Analytical Method

See **Federal Register**, June 30, 2004, (69 FR 39341).

C. Codex Maximum Residue Level

There is no Codex Maximum Residue Level (MRL) for residues of *Aspergillus flavus* NRRL 21882 on corn.

VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes,

nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1254 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 180.1254 Aspergillus flavus NRRL 21882; exemption from requirement of a tolerance.

(a) * * *

(b) *Aspergillus flavus* NRRL 21882 is temporarily exempt from the requirement of a tolerance on corn when used in accordance with the Experimental Use Permit 75624–EUP–2. This temporary exemption from tolerance will expire on May 2, 2009.

[FR Doc. E7–9427 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0203; FRL–8126–2]

Acetochlor; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises and separates the tolerances for acetochlor in 180.470 into paragraphs (a) through (d) and reassigns many of the current entries from paragraph (a) to paragraph (d), which applies to tolerances for indirect and inadvertent residues. This regulation also establishes several new tolerances and amends several existing tolerances under paragraph (a). It further establishes several new tolerances under paragraph (d); and amends and revises two tolerances moved to that paragraph. Details of these changes are outlined in Unit II. of this document. The Acetochlor Registration Partnership (ARP) and Monsanto Company requested these changes as submitted by petitions to EPA pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 16, 2007. Objections and requests for hearings must be received on or before July 16, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0203. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*,or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Vickie Walters, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5704; e-mail address: *walters.vickie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at*http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0203 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 16, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0203, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of February 7, 2007 (72 FR 5706) (FRL–8111–8, EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1F6263, 4F4505, 6F4791) by the Acetochlor Registration Partnership (ARP) and Monsanto Company, 1300 ''I'' St., NW., Washington, DC 20005, and PP 5F6918 by Monsanto Company, 1300 ''I'' St., NW., Suite 450 East, Washington, DC 20005. The petitions requested that 40 CFR 180.470(a) be amended by establishing tolerances for residues of the herbicide, acetochlor [2-chloro-2-methyl-6-ethyl-*N*-ethoxymethylacetamide) and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl-aniline (HEMA) moiety, and expressed as acetochlor equivalents in or on the food commodities corn, field, forage at 3.0 ppm (5F4505) corn, pop, grain at 0.05 part per million (ppm); corn, pop, stover at 1.5 ppm (PP 1F6263); corn, sweet, fodder and forage at 1.5 ppm; and corn, sweet, kernels plus cob with husks removed at 0.05 ppm (6F4791); sorghum, forage at 1.0 ppm; sorghum, grain at 0.05 ppm; and sorghum, grain, stover at 1.5 ppm (5F6918). These petitions also requested that 40 CFR 180.470(d) be amended by establishing tolerances for residues of the herbicide, acetochlor (2-chloro-2-methyl-6-ethyl-*N*-ethoxymethylacetamide) and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl-aniline (HEMA) moiety, and expressed as acetochlor equivalents in or on the food commodities beet, sugar, root and tops/pea and bean (except soybean) dried and shelled (subgroup 6C)/potato/ and grain, cereal (except rice) (group 15),at 0.05 ppm; grain, grain, cereal (except rice), forage/fodder/straw (group 16) forage at 0.5 ppm; grain, cereal (except rice) forage/fodder/straw (group 16) hay at 2.0 ppm; grain, cereal (except rice) forage/fodder/straw (group 16) stover at 0.1 ppm; grain, cereal (except rice) forage/fodder/straw (group 16), straw at 0.3 ppm (1F6263); non-grass animal feeds (group 18) forage at 1.3 ppm; and non-grass animal feeds (group 18) hay at 3.5ppm (6F4791). That notice referenced a summary of the petitions prepared by Acetochlor Registration Partnership and Monsanto Company, the registrants, which have been placed in the public docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petitions EPA is reassigning the entries for soybean, forage at 0.7 ppm; soybean, grain at 0.1 ppm; soybean, hay at1.0 ppm; wheat, forage at 0.5 ppm; wheat, grain at 0.02 ppm; and wheat, straw at 0.1 ppm; from 180.470(a) to 180.470(d) and establishing a tolerance for wheat, hay at 2.0 ppm under 40.CFR 180.470(d). The terminology for soybean, grain is being updated to read soybean, seed to conform to Agency procedures. Additionally, EPA is increasing the tolerance for corn, field, forage to 3.0 from 1.0 ppm. This tolerance will be listed in 180.470(a).

Based upon review of the data submitted and Agency procedures concerning commodity names, the Agency is correcting the terminology for pending crops under 40 CFR 180.470(a) as follows: corn, field, forage at 3.0 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 1.5 ppm; corn, sweet, kernels plus cob with husks removed at 0.05 ppm; corn, sweet, forage at 1.5 ppm; and sorghum, grain, grain at 0.05 ppm. The Agency is also correcting the tolerance levels and terminology for pending crops under 40 CFR 180.470(a) as follows: corn, sweet, stover at 1.0 ppm; sorghum, grain, forage at 1.6 ppm; sorghum, grain, grain at 0.05 ppm; and sorghum, grain, stover at 1.7 ppm. The above listings for corn, field, forage; sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover; replace the current listings for corn, field forage; sorghum, forage; sorghum, grain; and sorghum, grain, stover.

The Agency also determined that the tolerance expression and correct terminology for the pending crops under 40 CFR 180.470(d) should be written as follows: Tolerances are also established for indirect or inadvertent residues of acetochlor (2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetamide) and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor and expressed as acetochlor equivalents, in or on the following raw agricultural commodities when present therein as a

result of application of acetochlor to growing crops listed in paragraph (a) of this section: Animal feed, nongrass, group 18, forage at 1.3 ppm; animal feed, nongrass, group 18, hay at 3.5 ppm; beet, sugar, root at 0.05 ppm; beet, sugar, tops at 0.05 ppm; grain, cereal, group 15 except for corn, grain sorghum, rice and wheat, grain at 0.05 ppm; grain, cereal, forage, fodder and straw, group 16 except for corn, grain sorghum, rice and wheat, forage at 0.5 ppm; grain, cereal, forage, fodder and straw, group 16,except corn, grain sorghum, rice and wheat, hay at 2.0 ppm; grain, cereal, forage, fodder and straw, Group 16, except corn, grain sorghum, rice and wheat, stover at 0.1 ppm; grain, cereal, forage, fodder and straw, group 16, except corn, grain sorghum, rice and wheat, straw at 0.3 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.05 ppm; potato at 0.05; sunflower, seed at 0.05 ppm and wheat, hay at 2.0 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances and amendments for tolerances for residues of acetochlor (2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetamide) and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor and expressed as acetochlor equivalents.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by acetochlor as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is entitled ''Acetochlor-RED Phase 2 Revised HED Chapter of the TRED'' and is available in the docket (EPA–HQ–OPP–2005–0227 identified as document 0004.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for acetochlor used for human risk assessment can be found at *www.regulations.gov* in document Acetochlor: Human Health Risk Assessment to Support the Proposed Uses on Sorghum and Sweet Corn and Rotational Crops of Nongrass Animal Feeds (Group 18), Sugar Beets, Dried Shelled Beans and Peas (Subgroup 6C), Sunflowers, Potatoes Cereal Grains (Group 15), and Forage, Fodder and Straw of Cereal Grains (Group 16) on page 11 in Docket ID EPA–HQ–OPP–2006–0203.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to acetochlor, EPA considered exposure under the petitioned-for tolerances as well as all existing acetochlor tolerances in (40 CFR 180.470). EPA assessed dietary exposures from acetochlor in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In estimating acute dietary exposure, EPA used food consumption information from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances or for which tolerances are proposed, were treated and contain tolerance-level residues. Experimentally derived processing factors were used for cereal grain commodities. Default values were used for all other processed commodities.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998; Nationwide CSFII. As to residue levels in food, EPA chronic dietary analysis included anticipated residues from field trial data and assumed that all crop were treated. Experimentally derived processing factors were used for cereal grain commodities. Default values were used for all other processed commodities.

iii. *Cancer*. Previously, EPA has treated acetochlor as a non-threshold

carcinogen and conducted a linear low-dose quantitative cancer risk assessment in evaluating its safety. The determination that a quantitative linear low-dose cancer assessment was appropriate was based on findings that acetochlor caused mouse lung tumors and histiocytic sarcomas in female mice. The Agency has reexamined the data and concluded they do not support use of a quantitative linear low-dose cancer assessment. The Agency determined that the relationship of the mouse lung tumors to treatment was equivocal, due to some inconsistencies in dose-response between the two available mouse studies, the relatively frequent occurrence of the tumor in older mice and the lack of evidence of direct genotoxicity of acetochlor. Further the Agency found that the increase in the histiocytic sarcomas in female mice in one study was also equivocal. EPA concludes that this equivocal evidence of cancer shows no greater than a negligible risk of cancer. Nonetheless, acetochlor has been associated with nasal tumors in the rats and these tumors remain as a tumor of concern for human exposure to acetochlor. Because, however, the nasal tumors have been found to be a threshold effect, EPA has not used quantitative linear low-dose cancer assessment in assessing this cancer risk. Rather, EPA has relied on the chronic risk assessment because the chronic Reference Dose (cRfD), which is based on a NOAEL of 2 milligrams/kilograms/day (mg/kg/day), is considered to be protective of nasal tumors for which a point of departure of 10 mg/kg/day was identified. EPA has used the same exposure assumptions in assessing cancer risk as in assessing other chronic risks.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) of FFDCA require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The drinking water values used in the dietary risk assessments were based on information provided by the Acetochlor Registration Partner ship water monitoring program to support the current use on field corn. The Agency has determined that the new uses of acetochlor are not likely to result in concentrations exceeding those seen in the field corn monitoring data; therefore this data can be used to estimate drinking water concentrations resulting from the new uses on sweet corn and sorghum. In the monitoring data, exposure to acetochlor parent was significantly higher in the surface water monitoring sites than the ground water monitoring sites; therefore, the concentration used in the acute dietary assessment was from a surface water monitoring site that produced the highest concentration of 0.01821 ppm. The drinking water value used in the chronic dietary risk assessment was from a surface water monitoring site that produced the highest time-weighted annualized mean (TWAM) concentration for a single year of 0.00143 ppm.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Acetochlor is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Acetochlor is a member of the chloroacetanilide cumulative assessment group (CAG) which includes alachlor and butachlor. The Agency previously conducted a cumulative risk assessment for the CAG based on a common mode of action for the production of tumors of the nasal olfactory epithelium in rats. Butachlor was determined to be part of the CAG, however, there are currently no U.S. registrations for the chemical; therefore, it was excluded from the cumulative risk assessment. This risk assessment is fully discussed in the document: *Cumulative Risks from Chloroacetanilide Pesticides* dated March 6, 2006 identified as document EPA–HQ–OPP–2005–0050–0061 which is available on the internet at *http://www.regulaions.gov* in docket number EPA–HQ–OPP–2005–0050. Based on that cumulative risk assessment (CRA), the Agency concluded that the cumulative risks from alachlor and acetochlor did not exceed the Agency's level of concern since cumulative MOEs were above 13,000 for all populations compared to a cumulative level of concern of 100.

For this risk assessment the Agency believes that the cumulative risk from these new uses in addition to the current existing uses of acetochlor and alachlor will not exceed The Agency's level of concern. Individual risk assessments were conducted based on a point of departure of 10 mg/kg/day for nasal tumors. Anticipated residues based on field trial data and 100% crop treated was assumed for all existing and new uses for acetochlor. The individual acetochlor assessment from food resulted in MOEs raging from 49,000 for children 1-2 years old and children 3-5 years old to 179,000 for adults 50+. The addition of water to the assessment using surrogate data from the corn monitoring studies, resulted in MOEs ranging from 40,000 for children 1-2 years old to 116,000 for adults 50+. The MOEs for the General U.S. population were 111,000 from food and 83,000 from both food and water.

As noted in the March, 2006 cumulative risk assessment for the chloroacetanilide chemicals, alachlor is the index chemical and acetochlor is included in the assessment with a relative potency of 1/20th of alachlor. Further, as noted in the cumulative risk assessment, acetochlor commodities were not considered to be risk drivers in the chloroacetanilide CRA; therefore given the individual MOEs for acetochlor, it is unlikely that the addition of the new uses for acetochlor will cause an unacceptable cumulative risk when considered with the existing alachlor and acetochlor uses.

D. Safety Factor for Infants and Children

1.*In general.* Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different

factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. Concern for prenatal and postnatal susceptibility is low for acetochlor since toxicity to offspring was observed only at maternal toxic doses in developmental toxicity studies in the rat and rabbit and in three multi-generation reproductive toxicity studies in the rat. In addition, clear NOAELS were established in all of these three studies.

3. *Conclusion*. A 10X FQPA safety factor was applied to the acute dietary risk in the form of a database uncertainty factor to account for the lack of a developmental neurotoxicity study. The following findings support this determination.

i. The toxicity database for acetochlor is not complete at this time. A developmental neurotoxicity study is required based on neurological observations, primarily in the dog or an alternative test which addresses the sensitivity of the dog to neurological effects. In addition, submission of positive control studies for validation of the laboratory methodology used in the acute and subchronic rat oral neurotoxicity screening studies is required as confirmatory data and to upgrade those studies to acceptable.

ii. Evidence of neurotoxicity from exposure to acetochlor was observed in several studies. Salvation and other clinical signs (anogential staining, diarrhea) were reported in some studies in both the rat (two developmental studies) and the dog (subchronic and chronic oral). The dog appears to be more sensitive than the rat or mouse to effects on the nervous system, in that salivation occurred at lower dose levels and frank neuropathology of the brain was observed in one study. In the 1–year oral toxicity study in the dog pronounced neurological signs (ataxia, abnormal head movements, tremor, depressed righting, hoping and flexor reflexes, exaggerated tonic neck reflex and stiffness and rigidity of the hindlimbs) were observed at the high dose and were associated with degenerative lesions of the cerebellum. Other evidence of neurotoxicity is discussed on page 46 of the document entitled ''Acetochlor-RED Phase 2 Revised HED Chapter of the TRED'' which is available on the internet at *http://www.regulaions.gov* in the docket identified as EPA–HQ–OPP–2005–0227 document 0004.

iii. The acute dietary endpoint of concern for the general population including females 13-49 years of age, was derived from an acute oral neurotoxicity screening study in rats (NOAEL of 150 mg/kg/day based on decreased motor activity in females. Given the likely dosing in the developmental neurotoxicity study, it is possible that this study could lower the acute RfD by a factor of 10.

EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X for the chronic dietary risk. That decision is based on the following findings.

- The toxicity database for acetochlor is complete other than the lack of a developmental neurotoxicity study.

- Given likely dosing in the developmental neurotoxicity study, it is unlikely that this study would lower the cRFD. The chronic dietary endpoint of concern for all populations was derived from the chronic oral toxicity study in dogs with a NOAEL of 2 mg/kg/day based on the increased salivation and histopathology in testes, kidney and liver at 10 mg/kg/day. The cRFD of 2.0 mg/kg/day is less than the NOAELs in the reproductive study of 21 mg/kg/day. A developmental neurotoxicity study will likely be conducted at dose levels similar to those of the 2–generation rat reproduction study. No evidence of neuropathology or overt neurobehavioral effects were observed in the 2–generation reproductive study with rats.

- There is no evidence that acetochlor results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study. The FQPA safety factor was reduces to 1X.

- There are no residual uncertainties identified in the chronic exposure database. The chronic dietary food exposure assessment was based on the assumption of all crops treated and anticipated residues from acceptable field trial data for all commodities. For chronic dietary food exposure assessments, experimentally derived processing factors were used for cereal grain commodities and default processing factors were used for all other processed commodities. The drinking water values used in the dietary risk assessments were based on information provided by the Acetochlor Registration Partnership water monitoring program to support the current use on field corn. These assessments will not underestimate the exposure and risks posed by acetochlor.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acetochlor will occupy <1% of the aPAD at the 95th percentile for the U.S. population and 2.6% of the aPAD at the 95th percentile for all infants, the population subgroup receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acetochlor from food and water will utilize <1% of the cPAD for the U.S. population and 1.2 % of the cPAD for children 1-2 years old, the population subgroup receiving the greatest exposure. There are no residential uses for acetochlor that result in chronic residential exposure to acetochlor.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Acetochlor is not registered for use on any sites that would result in residential exposure. Therefore, an aggregate risk assessment for this duration is not appropriate.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Acetochlor is not registered for use on any sites that would result in residential exposure. Therefore, an aggregate risk assessment for this duration is not appropriate.

5. *Aggregate cancer risk for U.S. population*. As explained above, in Unit III.C.iii., the cRfD is considered to be protective of any cancer risk posed by acetochlor and as discussed in Unit E2, EPA has found that chronic acetochlor exposure does not exceed the cRfD; therefore, aggregate cancer risks are not of concern.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to acetochlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate high performance liquid chromatography with oxidative coulometric electrochemical detector (HPLC/OCED) method is available for enforcing new tolerances for acetochlor and its metabolites in sweet corn, sorghum, and rotational crops. This method is listed as Method I for plants in PAM Vol. II.

B. International Residue Limits

There are no Codex Maximum Residue Levels established for acetochlor on agricultural commodities.

V. Conclusion

Therefore, tolerances are established for residues of acetochlor (2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetamide) and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety to be analyzed as acetochlor, and expressed as acetochlor equivalents as discussed in Unit II.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 8, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.470 is revised to read as follows:

§ 180.470 Acetochlor; tolerances for residues.

(a) *General*. Tolerances are established for residues of acetochlor; 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor and expressed as acetochlor equivalents, in or on the following raw agricultural commodities.

Commodity	Parts per million
Corn, field, forage	3.0
Corn, field, grain	0.05
Corn, field, stover	1.5
Corn, pop, grain	0.05
Corn, pop, stover	1.5
Corn, sweet, forage	1.5
Corn, sweet, kernels plus cob with husks removed	0.05
Corn, sweet, stover	1.0
Sorghum, grain, forage	1.6
Sorghum, grain, grain	0.05
Sorghum, grain, stover	1.7

(b) *Section 18 emergency exemptions*. [Reserved].

(c) *Tolerances with regional registrations*. [Reserved].

(d) *Indirect or inadvertent residues*. Tolerances are established for indirect or inadvertent residues of acetochlor; 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor and expressed as acetochlor equivalents, in or on the following raw agricultural commodities when present therein as a result of application of acetochlor to the growing crops in paragraph (a) of this section:

Commodity	Parts per million
Animal feed, nongrass, group 18, forage	1.3
Animal feed, nongrass, group 18, hay	3.5
Beet, sugar, root	0.05
Beet, sugar, tops	0.05
Grain, cereal, forage, fodder and straw, group 16, except corn, grain sorghum, rice and wheat, forage	0.5
Grain, cereal, forage, fodder and straw, group 16, except corn, grain sorghum, rice and wheat, hay	2.0
Grain, cereal, forage, fodder and straw, group 16, except corn, grain sorghum, rice and wheat, stover	0.1
Grain, cereal, forage, fodder and straw, group 16, except corn, grain sorghum, rice and wheat, straw	0.3
Grain, cereal, group 15, except corn, grain sorghum, rice, and wheat, grain	0.05
Pea and bean, dried shelled, except soybean, subgroup 6C	0.05
Potato	0.05
Soybean, forage	0.7
Soybean, hay	1.0
Soybean, seed	0.1
Sunflower, seed	0.05
Wheat, forage	0.5
Wheat, grain	0.02
Wheat, hay	2.0
Wheat, straw	0.1

[FR Doc. E7–9430 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 72, No. 94
Wednesday, May 16, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1924

RIN 0575–AC65

Thermal Standards

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (Agency) is proposing to amend its regulations to be consistent with other federal agencies. The current thermal standards for existing single family housing can impose an unnecessary financial burden on the borrower. Removing the thermal standards for existing single family housing will provide consistency with HUD existing single family housing thermal standards. This change will not affect the thermal standards for new construction; such requirements are generally prescribed by adopted building and model energy codes. Construction materials and building techniques have improved tremendously during the last thirty years, creating many alternatives to achieve thermally efficient homes. Removing the Agency's imposed thermal standards for existing single family housing will give a borrower the opportunity to allocate money towards other improvements which may result in higher cost savings. The rule will not result in any increase in costs or prices to consumers; non-profit organizations; businesses; Federal, State, or local government agencies; or geographic regions.

DATES: Written or e-mail comments must be received on or before July 16, 2007.

ADDRESSES: You may submit comments on this rule by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.

• *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Michel Mitias, Technical Support Branch, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, STOP 0761, 1400 Independence Avenue SW., Washington, DC 20250–0761; Telephone: 202–720–9653; FAX: 202–690–4335; E-mail: *michel.mitias@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Civil Justice Reform

In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The Administrator of the Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Programs Affected

The programs affected are listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Direct and Guaranteed/Insured).

Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Intergovernmental Review

The Agency conducts intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and

Activities,'' and in 7 CFR part 3015, subpart V. The Very Low to Moderate Income Housing Loans Program, Number 10.410, is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. An intergovernmental review for this revision is not required or applicable.

Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this rule.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. (If appropriate—For information pertinent to E–GOV compliance related to this proposed rule, please contact Michel Mitias, 202–720–9653.

Background

The quality of construction, age, and condition of an existing dwelling financed through the Agency's single family housing programs may have a significant impact on the unit's thermal efficiency. The Agency should consider the thermal performance of a home as part of its overall condition, rather than a separate factor.

Newer residences, or older residences currently in average or good condition, generally can be accepted as being representative of their community, and are likely to have average thermal efficiency for the market in which they are located. These homes represent a typical residence in terms of overall design, construction, and appeal in the marketplace, and can be presumed to have reasonable, overall thermal performance.

Aging residences, particularly those with significant deficiencies, or those designated as being in only fair condition or less, could represent a higher risk to the borrower and the Agency. Homes with older effective ages or in fair condition may be financed in some circumstances with certain upgrades, but should be thoroughly and carefully inspected to insure the overall soundness of the collateral, including thermal components. These homes may require thermal and insulation upgrades in order to ensure reasonable (average) heating and cooling costs for borrowers.

The Agency's existing thermal standards, or similar standard, may serve as a guide for an energy efficient home, however we recognize that incremental improvements to existing homes to reach this standard may not always be cost effective. The Agency should look at homes to be financed based on their overall condition. When a home needs improvement in order to be acceptable for our financing, the focus should be on reducing the effective age by improving the existing overall condition as well as increasing energy efficiency.

A combination of Uniform Residential Appraisal Report (URAR) designations for ''quality of construction'' and ''condition'', as well as ''age'' and ''effective age'' may be used to judge the overall condition of a home, and whether additional analysis needs to be undertaken to ensure the dwelling will be reasonably thermally efficient for the market in which it is located. In addition, an on-site inspection by an Agency representative or designee may provide further information on the thermal performance of a home. Hence, the Agency has determined that it is no longer necessary to impose thermal standards for existing single family housing.

This change will not be subject to Section 509(a) of the Housing Act of 1949 because it pertains only to existing single family housing. All new single family housing construction must comply with the Minimum Property Standards (MPS) adopted by the Department of Housing and Urban Development (HUD), as well as national model codes adopted by the applicable jurisdiction, locality, or state.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

For the reasons set forth in the preamble, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Planning and Performing Construction and Other Development

2. Exhibit D of subpart A is amended by:

A. Removing the last sentence in paragraph II;

B. Removing and reserving paragraph IV B;

C. Revising the words ''paragraphs IV A and IV B'' in paragraph IV C 1 to read ''paragraph IV A'';

D. Revising the words ''paragraphs IV A and B'' in paragraph IV C 2 to read ''paragraph IV A'';

E. Revising the words ''paragraphs IV A or IV B'' in the first and last sentences of paragraph IV C 2b, and in paragraphs IV C 3 introductory text, IV C 3a and IV C 3b to read ''paragraph IV A''; and

F. Removing the words ''or B'' in paragraphs IV C introductory text and IV C 3c.

Dated: April 6, 2007.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 07–2366 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB21

Loan Guarantees for Projects that Employ Innovative Technologies

AGENCY: Office of the Chief Financial Officer, Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: The Department of Energy (DOE or Department) today proposes policies and procedures applicable to DOE's loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005. Today's proposed rule, when final, also will further the President's Advanced Energy Initiative. Title XVII authorizes the Secretary of Energy to make loan guarantees for projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' Title XVII also identifies ten categories of technologies that, if employed in commercial projects, are potentially eligible for a loan guarantee. A principal goal of Title XVII is to encourage commercial use in the United States of new or significantly improved energy-related technologies. DOE believes that accelerated commercial use of new and improved technologies will help sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply and economy for the United States.

DATES: Public comment on this proposed rule will be accepted until *July 2, 2007.* A public meeting on the proposed rule will be held on Friday, June 15, 2007, from 9 a.m. to 4:30 p.m. in Washington, DC. Interested persons who wish to speak at the public meeting must telephone the DOE Loan Guarantee Program Office at (202) 586–8336 during the period Friday, June 1, through Tuesday, June 12, 2007, between the hours of 9 a.m. and 4:30 p.m. Interested persons also may request to speak by writing to Mr. Howard G. Borgstrom at the address given in the **ADDRESSES** section of this notice, or by sending an e-mail to *lgprogram@hq.doe.gov*. Such requests must be received by 4:30 p.m. on Tuesday, June 12, 2007. The Department also requests that persons wishing to speak submit a copy of their prepared statement to Mr. Borgstrom by 4:30 p.m. on June 12, 2007. See section III. of this notice for details concerning public comment procedures.

ADDRESSES: You may submit comments, identified by RIN 1901–AB21, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *E-mail to lgprogram@hq.doe.gov*. Include RIN 1901–AB21 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. *Mail:* Address written comments to Mr. Howard G. Borgstrom, Director, Business Operations Center, Office of the Chief Financial Officer, U.S. Department of Energy, Mailstop CF–60, Room 4A–221, 1000 Independence Avenue, SW., Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

The public meeting for this rulemaking will be held in Washington, DC at the Forrestal Building in Room GE–086 (Main Auditorium), 1000 Independence Avenue, SW., Washington, DC.

This Notice of Proposed Rulemaking, the public meeting transcript, and any comments that DOE receives are being made available on the Web site at: *http://www.lgprogram.energy.gov/*.

FOR FURTHER INFORMATION CONTACT: The DOE Loan Guarantee Program Office, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8336, e-mail: *lgprogram@hq.doe.gov*; or Warren Belmar, Deputy General Counsel for Energy Policy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–6758, e-mail: *warren.belmar@hq.doe.gov*; or Lawrence R. Oliver, Assistant General Counsel for Fossil Energy and Energy Efficiency, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9521, e-mail: *lawrence.oliver@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Title XVII of the Energy Policy Act of 2005 (Title XVII or the Act) (42 U.S.C. 16511–16514) authorizes the Secretary of Energy (Secretary or DOE), after consultation with the Secretary of the Treasury, to make loan guarantees for projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' Commercial technology is defined as ''a technology in general use in the commercial marketplace'' and ''does not include a technology solely by use of the technology in a demonstration project funded by DOE.'' The following ten categories of projects are, by law, specifically made eligible for Title XVII loan guarantees:

1. Renewable energy systems;
2. Advanced fossil energy technology (including coal gasification meeting the criteria in paragraph 1703(d) of the Act);
3. Hydrogen fuel cell technology for residential, industrial, or transportation applications;
4. Advanced nuclear energy facilities;
5. Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon;
6. Efficient electrical generation, transmission, and distribution technologies;
7. Efficient end-use energy technologies;
8. Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles;
9. Pollution control equipment; and
10. Refineries, meaning facilities at which crude oil is refined into gasoline.

This list of ten types of projects is a nonexclusive list of the types of projects that are eligible for Title XVII guarantees.

Today, DOE proposes regulations to establish generally applicable policies, procedures and requirements for the Title XVII loan guarantee program. These proposed regulations were referenced in the Guidelines for the program that DOE published on August 14, 2006 (Guidelines) (71 FR 46451). The Guidelines stated that they would only apply to the first Title XVII solicitation, which was issued contemporaneously with the Guidelines, and that all subsequent solicitations would be governed by regulations to be adopted by DOE at a later date.

In the first solicitation for Pre-Applications for ''Federal Loan Guarantees for Projects that Employ Innovative Technologies in support of the Advanced Energy Initiative,'' DOE focused on technologies that would advance the President's Advanced Energy Initiative. Although this meant the first solicitation did not cover all types of projects that potentially may be eligible for loan guarantees under Title XVII, there is nothing in Title XVII that requires all solicitations implementing that program be open to every project arguably eligible for a guarantee under the statute. DOE has the ability to tailor specific solicitations to certain types of projects, based on programmatic objectives, loan guarantee authority that is available, and the availability of funds to implement the program, among other relevant criteria. DOE will seek to have a broad portfolio of large and small projects, for a wide variety of technologies. For example, the Administration's 2008 Budget proposes that DOE may guarantee up to $4 billion in loans for central power generation facilities (for example, nuclear facilities or carbon sequestration optimized coal power plants); $4 billion in loans for projects that promote biofuels and clean transportation fuels; and $1 billion in

loans for projects using new technologies for electric transmission facilities or renewable power generation systems. Precisely how any authorized loan guarantee authority would be allocated, however, ultimately would depend on the merits and benefits of particular project proposals and their compliance with statutory and regulatory requirements. The deadline for submission of Pre-Applications in response to the first solicitation was December 31, 2006, and DOE received 143 Pre-Applications.

On February 15, 2007, President Bush signed into law Public Law 110–5, the Revised Continuing Appropriations Resolution, 2007 (CR, or Pub. L. 110–5) which authorizes DOE to issue guarantees under the Title XVII program for loans in the ''total principal amount, any part of which is to be guaranteed, of $4,000,000,000.'' This authorization provides DOE sufficient authority, under Title XVII and the Federal Credit Reform Act of 1990 (FCRA) (2 U.S.C. 661(a) *et seq*) to issue loan guarantees. Section 20320(b) of the CR further provides that no loan guarantees may be issued under the Title XVII program until DOE promulgates final regulations that include ''programmatic, technical, and financial factors the Secretary [of Energy] will use to select projects for loan guarantees,'' ''policies and procedures for selecting and monitoring lenders and loan performance,'' and ''any other policies, procedures, or information necessary to implement Title XVII of the Energy Policy Act of 2005.''

II. Discussion of Proposed Rule

The CR prohibits DOE from issuing any loan guarantees under the Title XVII program until the Department has issued final regulations that address a number of different matters. (Pub. L. 110–5, section 20320(b)). However, section 20320 does not state whether or to what extent those final regulations must apply to any matters pursuant to the first solicitation under the Title XVII program, which DOE issued on August 8, 2006, and in response to which Pre-Applications were due by December 31, 2006, several weeks prior to the enactment of Public Law 110–5.

In order to ensure that the Department complies with the CR but does not prejudice Pre-Applicants who responded to the first Title XVII solicitation, DOE proposes to specify, by regulation, that today's proposed rule, when final, shall not apply to the Pre-Applications, Applications, Conditional Commitments, and Loan Guarantee Agreements pursuant to the August 2006 solicitation. The only exceptions shall be with respect to the default, recordkeeping and audit requirements in sections 609.15 and 609.17, which Title XVII requires be established by regulation. However, the proposed regulations permit DOE and an Applicant to agree in a Loan Guarantee Agreement entered into pursuant to the first solicitation that additional provisions of the final rule shall apply to the particular project.

However, Pre-Applicants who responded to the first solicitation will not necessarily be permanently exempt from these regulations. If the Department does not accept their Pre-Application and invite them to submit an Application pursuant to that solicitation, then their participation in the program in response to any future solicitation will be fully subject to the requirements of the final regulations. Moreover, to provide clarity, the regulation provides that the exception from applicability of these regulations applies only to those for whom the invitation to submit an Application is extended by the Department to a Pre-Applicant no later than December 31, 2007. The Department anticipates being able to invite selected Pre-Applicants to submit Applications in response to the first solicitation by that deadline, and perhaps well before that deadline. Pre-Applicants who are not being invited to submit an Application also will be notified that they have not been selected, and any further involvement by such Pre-Applicants in the Title XVII program will be subject to all requirements of the final regulations.

The Act authorizes the Secretary to make loan guarantees as an incentive for the use of new or improved technologies. Section 1702 of the Act outlines general terms and conditions for Loan Guarantee Agreements and directs the Secretary to include in Loan Guarantee Agreements ''such detailed terms and conditions as the Secretary determines appropriate to—(i) protect the interests of the United States in case of a default [as defined in regulations issued by the Secretary]; and (ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project for which the loan guarantee was obtained.'' (42 U.S.C. 16512(g)(2)(c)) Section 1702(i) of the Act instructs the Secretary to prescribe regulations outlining record-keeping and audit requirements. This proposed rule sets forth application procedures, outlines terms and conditions for Loan Guarantee Agreements, and lists records and documents that project participants must keep. The proposed rule also sets forth other provisions that the CR requires DOE's regulations to address.

A. Technologies

A principal purpose of the Act's Title XVII loan guarantee program is to support projects in the United States that ''employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' Such technologies are identified as ''innovative technologies.'' Section 1701(1) of the Act defines ''commercial technology'' as ''a technology in general use in the commercial marketplace.'' Section 1701(1) further states that a technology does not become a ''commercial technology'' solely because it is used in a demonstration project funded by DOE.

Because section 1702(d)(1) also requires a ''reasonable prospect of repayment of the principal and interest'' on all loans or other debt obligations issued to finance a project, technologies for project proposals must be mature enough to assure dependable commercial operations that generate sufficient revenues to service the project's debt. Therefore, projects that are solely research, development or demonstration projects (i.e., a project designed exclusively for research and development or to demonstrate feasibility of a technology on any scale) should not be eligible for Title XVII loan guarantees, and DOE is proposing to make such research, development or demonstration projects ineligible for a loan guarantee under Title XVII. DOE believes that accelerated commercial use of new or improved technologies, as distinguished from research, development or demonstrations at any scale of technological feasibility, will help to sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply, and be able to earn revenues that give the projects a ''reasonable prospect of repayment of the principal and interest'' on its debt obligations. Accordingly, DOE's loan guarantee program is not intended for technologies in the research, development or demonstration stages.

Title XVII does not explain or define the phrase ''new or significantly improved'' in section 1703(a)(2). Nor does the Act explain or define the terms ''general use'' or ''commercial marketplace'' in section 1701(1), other than specifying that ''commercial technology'' does not include a technology merely because it is used in a DOE-funded demonstration project. Therefore, DOE must use its discretion and judgment to define these terms.

DOE believes that the phrase ''new or significantly improved technology'' is not readily susceptible to precise definition in these regulations. It is not possible to specify in advance precisely what should be considered ''new'' or what would constitute a ''significant improvement'' in a particular technology. Nonetheless, DOE does believe it is both possible and prudent to specify, in these regulations, parameters by which that determination will be made in particular cases in the future.

Webster's II New College Dictionary (1999) defines the term ''new'' to mean ''[h]aving existed or been made for only a short time * * * [n]ever used before * * * [j]ust discovered, found, or learned * * *'' or somewhat unhelpfully, ''[n]ot yet old.'' The term ''significant'' is defined as ''meaningful * * * [m]omentous * * * important,'' and the term ''improve'' or ''improvement'' is defined as ''[t]o advance to a better quality or state * * * to increase the productivity or value * * * to make advantageous additions or changes.'' For purposes of the Title XVII program, moreover, it is important that a technology be new or significantly improved with respect to energy production, use, efficiency, or transportation, rather than with respect to other attributes. For example, a particular facility might have significantly improved aesthetic appeal in comparison to an older facility, but DOE does not believe that type of improvement alone should qualify a facility for a Title XVII loan guarantee.

Thus, DOE proposes to define, by regulation, the term ''new or significantly improved technologies'' to mean technologies concerned with the production, consumption or transportation of energy, and that have either only recently been discovered or learned, or that involve or constitute meaningful and important improvements in the productivity or value of the technology. DOE requests comment on this definition.

Because Title XVII focuses on encouraging and incentivizing innovative technologies, the Title XVII loan guarantee program should only be open to projects that employ a technology that has been used in a very limited number of commercial projects or for only a limited period of time. Indeed, when read together, sections 1701 and 1703 of Title XVII prohibit DOE from issuing loan guarantees for projects that only use commercial technologies that already are in general use in the United States at the time the guarantee is issued. In section 609.2 of the proposed regulations, DOE is proposing two possible ways of interpreting ''general use.'' First, DOE could interpret the term ''general use'' to mean that a technology has been ordered for, installed in, or used in a certain number of commercial projects in the United States. So, as one alternative, DOE proposes to state in its regulations that a technology would be considered to be in general use, and therefore not eligible for a Title XVII loan guarantee, if it has been ordered for, installed in, or used in five or more projects in the United States at the time the loan guarantee is issued. Allowing loan guarantees for up to five projects employing the same type of technology would allow use of these guarantees to introduce innovative technologies to the commercial marketplace, but would also ensure that guarantees can only be issued for a limited number of projects before it will be up to the commercial marketplace to decide whether the economic and environmental benefits of a particular technology justify continued investments in it.

As a second alternative, DOE proposes to state in its regulations that a technology would be considered to be in general use, and therefore not eligible for a Title XVII loan guarantee, if it has been in operation in a commercial project in the United States for a particular number of years. Under this alternative, there would be no numerical limit on the number of loan guarantees DOE could issue for a particular technology—it might be 50, 10, 5, 1 or even zero. Whether DOE could issue a guarantee would be determined in each case by whether the technology at issue had been in operation in a commercial project in the United States for a particular number of years, which DOE proposes to be five years. The five-year period would begin on the date that the technology is commissioned on the particular commercial project. DOE selected the period of five years because it believes that this period of time will allow a sufficient period for early commercial operation and for proving the viability of a technology in the commercial marketplace.

DOE requests comment on these alternative interpretations and approaches. DOE furthermore requests comment as to whether, regardless of which alternative is adopted in the final rule, the same definition should apply to all types of projects and technologies. For example, if the first alternative described above is adopted, should the relevant number of projects or technologies be the same for renewable energy systems, advanced nuclear energy facilities, pollution control equipment, and all other potentially eligible technologies and projects? Or, should the number specified in DOE's regulations be different for different types of projects and technologies? Similarly, if the second alternative described above is adopted, should the time period be the same for all types of eligible projects and technologies? And if it should be different, why? Commenters who wish to express views on any of these issues are requested to supply specific information and data supporting their views.

The Department notes that regardless of the resolution of the issues discussed above, a project may be eligible for a Title XVII loan guarantee if it uses technology that has been used in any number of projects outside the United States and for any period of time outside the United States, so long as the technology is not in ''general use'' in the United States.

B. Project Costs

Proposed section 609.10, in accordance with section 1702(c) of the Act, provides that any loan guarantee issued by DOE may not exceed 80 percent of total Project Costs. Sections 609.2 and 609.12 of the proposed rule define ''Project Costs'' as those that are necessary, reasonable, customary, and directly related to the design, engineering, financing, construction, startup, commissioning and shake down of an Eligible Project. Conversely, excluded costs cover initial research and development costs, the credit subsidy cost, any administrative fees paid subsequent to section 1702(h), and operating costs after the facility has been placed in service. These are costs associated with, and a condition of, receiving a federal loan guarantee. Furthermore, if theses costs were allowed, in the case of default, these costs would be shifted from the project sponsor to the federal taxpayer. DOE invites public comments on these issues.

C. Solicitation

Section 609.3 of the proposed regulations requires DOE to issue a solicitation to start the process that ultimately would culminate in the Department issuing a loan guarantee. This section also sets forth certain minimum requirements for each solicitation, including the fees that will be required of persons invited to submit Applications and criteria that the Department will use to weigh competing Pre-Applications, when Pre-Applications are requested, and Applications, and to make ultimate selections for loan guarantees.

Generally, DOE plans to solicit Pre-Applications only when Pre-Applications can minimize or reduce the financial burdens on Project Sponsors prior to a determination that a particular technology will likely not be sufficiently developed or mature to satisfy the minimum requirements for successful commercial operations. This approach would also reduce DOE's administrative costs incurred for detailed review of multiple full Applications in technology areas where most of the projects will likely not be ready for commercial operations.

The proposed regulations permit DOE to start the solicitation process by soliciting Pre-Applications, or by skipping the Pre-Application stage and soliciting Applications, because DOE believes a Pre-Application stage may be appropriate and necessary for some technologies and projects but perhaps not for others. Solicitations for Pre-Applications or Applications issued after promulgation of the final rule must address many important aspects of the application process, including the relevant period of time during which Pre-Applications or Applications for loan guarantees may be filed. Because each project will be unique and each loan guarantee potentially subjects the Federal government to significant financial liability, DOE plans to engage in a rigorous review of a proposed project before determining whether it may be eligible for a Loan Guarantee Agreement and subsequently approving and issuing loan guarantees.

DOE does not intend to substantively review and evaluate Pre-Applications or Applications for any proposals that do not meet the specific requirements of the applicable solicitation. Likewise, only Applications invited by DOE or submitted in response to a solicitation will be considered for a Loan Guarantee Agreement. Consistent with section 20320(b) of Public Law 110–5, the proposed regulations require that programmatic, technical and financial factors to be used by DOE to select projects for loan guarantees. Section 609.7 satisfied this requirement.

D. Payment of the Credit Subsidy Cost

Section 1702(b) of the Act states that: ''No guarantee shall be made unless (1) an appropriation for the cost has been made; or (2) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury.'' (42 U.S.C. 16512) Therefore, either Congress must appropriate funds to cover the Credit Subsidy Cost of the Loan Guarantee or the Borrower must make payment to DOE of this cost. DOE has neither requested nor received appropriations to make partial or full payment of the Credit Subsidy Cost. However, section 20320(a) of Pub. L. 110–5 authorized DOE to accept Credit Subsidy Cost payments from Borrowers to pay the full subsidy costs of loan guarantees, and DOE's current intent is to implement the Title XVII program only through the self-pay authority of section 1702(b)(2) of the Act. Furthermore, DOE interprets section 1702(b) as not allowing for partial payment of the Credit Subsidy Cost by Borrower with the remainder covered by a Congressional appropriation; section 1702(b) authorizes either an appropriation or payment of this cost in full by the Borrower. DOE proposes to memorialize this interpretation of section 1702(b) of the Act in section 609.9 of the regulations.

E. Assessment of Fees

In addition to the Credit Subsidy Cost, section 1702(h) also requires DOE to ''charge and collect fees for guarantees'' to cover the Administrative Cost of Issuing a Loan Guarantee. Proposed §§ 609.6, 609.8 and 609.10 provide that DOE shall collect fees for administrative expenses to cover all phases of an Eligible Project. As defined in proposed § 609.2, fees consist of the administrative expenses that DOE incurs during:

(1) The evaluation of a Pre-Application, if a Pre-Application is requested in a solicitation, and an Application for a loan guarantee;

(2) The offering of a Term Sheet, executing the Conditional Commitment, negotiation, and closing of a Loan Guarantee Agreement; and

(3) The servicing and monitoring of the Loan Guarantee Agreement, including during construction, start-up, commissioning, shakedown, and the operational phases of an Eligible Project.

The Act, and section 1702(h) in particular, affords DOE discretion with respect to the fees it imposes to cover applicable administrative costs. For the first solicitation issued by DOE in August 2006, DOE elected not to impose fees in connection with the Pre-Application stage and reserved the right to charge an Application fee as part of the invitation to submit an Application. DOE proceeded in this manner so as not to unduly discourage potential project sponsors from submitting Pre-Applications. In the proposed regulations, DOE is requiring that the payment of administrative fees start with the submission of an Application. If implemented by DOE in the final rule, this would mean that Project Sponsors who submit Pre-Applications and are denied further consideration will not be charged any fees for expenses incurred by DOE in reviewing their Pre-Application materials. In addition, Pre-Applicants that are invited to submit Applications but decline to do so will also not be charged a fee. DOE does anticipate incurring significant administrative expenses as part of its review of Pre-Applications, and Applications which, in the absence of Pre-Application and Application fees, would not be fully recouped by DOE. Under the proposed rule, the fees assessed to Borrowers who submit Applications and enter into Conditional Commitments will only cover the expenses attendant to that Borrower's project proposal and will not cover the costs incurred by DOE for reviewing other Pre-Applications that were denied further consideration. As stated above, section 1702(h) requires that DOE ''charge and collect fees for guarantees * * * sufficient to cover applicable administrative expenses.'' DOE interprets this requirement as allowing it to charge and collect fees from the Applicant/Borrower to cover DOE's administrative expenses in connection with that particular Applicant/ Borrower's project, or to charge and collect fees from Applicant/ Borrower to cover a proportionate share of DOE's administrative expenses for the entire loan guarantee program. In its proposed regulations, DOE adopts the former approach.

Proposed section 609.6 provides that the Applicant must pay a filing fee with the submission of an Application (First Fee). This First Fee must be in an amount sufficient to cover DOE's administrative expenses in connection with DOE's review and evaluation of a Pre-Application, if any, and the Application. A Second Fee (Second Fee) will be collected when DOE and the Applicant execute a Term Sheet which constitutes a Conditional Commitment. This Second Fee must be an amount sufficient to cover DOE's administrative expenses during the Term Sheet through the closing phase.

At the closing and subsequent thereto, DOE will collect fees, as specified in the Conditional Commitment, for DOE's servicing and monitoring expenses throughout the term of the guaranteed loan (Third Fee). The Third Fee may be assessed and collected quarterly, annually, or more or less frequently, as determined by the Secretary, including one lump sum payment at the closing. The Third Fee may be a percentage of the amount of Guaranteed Obligations outstanding from time to time or specific dollar amounts based on DOE's

actual and/or reasonably anticipated administrative expenses.

The First and Second Fees are not refundable and must be paid regardless of whether a Loan Guarantee Agreement is executed. The Third Fee is also not refundable and the amount and method of payment of the Third Fee will be specified in the Loan Guarantee Agreement. This will enable DOE to comply with the mandate of section 1702(h) of the Act to charge fees to cover DOE's administrative expenses ''for guarantees'' while also ensuring that Applicants act in good faith when submitting an Application and use their best efforts to meet all specified requirements of the Conditional Commitment. DOE invites public comments as to all aspects concerning the assessment of fees for the Department's administrative expenses.

F. Financial Structure

The Act does not impose any specific limitations on the financial structure of proposed projects, other than that the loan guarantee ''shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee as estimated at the time at which the guarantee is issued.'' (42 U.S.C. 16512(c)) However, section 1702(d)(1) provides: ''No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the Borrower.'' (42 U.S.C. 16512(d)(1)) DOE therefore must make repayment of debt a very high priority of the loan guarantee program and DOE is authorized to adopt policies to ensure that Borrowers and Eligible Lenders use their best efforts to ensure repayment of Guaranteed Obligations.

This view is bolstered by the mandate of section 1702(g)(2)(B), which requires that ''with respect to any property acquired pursuant to a guarantee or related agreements, [the rights of the Secretary] shall be superior to the rights of any other person with respect to the property.'' DOE interprets this statutory provision to require that DOE possess a first lien priority in the assets of the project and other assets pledged as security. Because DOE believes it is not permitted by the Act to adopt a *pari passu* security structure, holders of the non-guaranteed portion of a loan or debt instrument will have a subordinate claim to DOE in the event of default.

To harmonize and balance the twin goals of issuing loan guarantees to encourage use of new or significantly improved technologies in Eligible Projects while limiting the financial exposure of the Federal government, DOE expressed a preference in the August 2006 Guidelines for guaranteeing no more than 80 percent of the total face amount of any single debt instrument. The Guidelines further provided that under no circumstances would DOE guarantee 100 percent of a loan or other debt obligation.

In today's rule, DOE is proposing to guarantee up to 90 percent of a particular debt instrument or loan obligation for an Eligible Project that can be guaranteed by a Title XVII loan guarantee, so long as DOE's guarantees do not account for more than 80 percent of Project Costs. Furthermore, in connection with any loan guaranteed by DOE that may be participated, syndicated, traded, or otherwise sold on the secondary market, DOE is proposing to require that the guaranteed portion and the non-guaranteed portion of the debt instrument or loan be sold on a pro-rata basis. The guaranteed portion of the debt may not be ''stripped'' from the non-guaranteed portion, *i.e.* sold separately as an instrument fully guaranteed by the Federal government. DOE invites public comment on the 90 percent loan guarantee limitation and the prohibition on ''stripping.''

The primary purpose of the Title XVII loan guarantee program is to support projects using or employing ''new or significantly improved technologies.'' These new technologies, by definition, have not been proven in commercial projects in the United States and therefore may present significant risks for Title XVII loan guarantees. DOE believes that the sum of Title XVII requirements suggest that a guarantee of up to 90% of the face value of a loan may be required to achieve program goals.

DOE intends to gain valuable experience from the first round of proposals submitted under the Guidelines, where some Pre-Applicants sought loan guarantees for 80% or less of their proposed debt instruments. In developing final regulations, DOE will take into account, among other things, the comments on this proposal, DOE's experience with the first round of proposals, and whether there are other methods of assuring that Eligible Lenders bear some of the financial risk exist while at the same time assuring that the objectives of the Title XVII program are accomplished. DOE requests public comment on the proposal to allow up to a 90 percent loan guarantee, the technology or circumstance that might warrant providing this level of guarantee, whether Eligible Lenders will perform adequate due diligence in the absence of assuming some amount of risk, the applicability of practices employed by other Federal agencies to DOE's loan guarantee program, and whether DOE's proposal will facilitate the goal of offering loan guarantees to encourage early commercial use of innovative technologies.

DOE also will consider whether Project Sponsors have a significant financial commitment to the project. The Act does not mandate a specific equity contribution, but DOE is proposing to require that the Project Sponsors have a significant equity stake in a project. DOE solicits comments on the merits of adopting a minimum equity percentage requirement for projects.

In addition, DOE intends to consider whether a Project Sponsor will rely upon other government assistance (*e.g.*, grants, tax credits, other loan guarantees) to support financing, construction or operation of a project. DOE will manage the loan guarantee program in a manner that seeks to minimize support of projects that rely on multiple forms of significant Federal financial assistance; in general, DOE believes it is desirable that each project receive only one form of such assistance. Therefore, if an applicant is or will be receiving multiple forms of significant Federal financial assistance, that fact generally will be a negative factor when DOE evaluates loan guarantee applications. Nonetheless, the receipt of other forms of assistance will not disqualify a project from being eligible for a DOE loan guarantee, and DOE furthermore recognizes that in some situations—such as, for example, with respect to the first new nuclear generating facilities, which may be eligible for risk insurance agreements, loan guarantees and tax credits—multiple forms of federal assistance to the same project could advance important national energy policy priorities.

Finally, DOE is proposing to require with submission of Applications, a credit assessment for the project without a loan guarantee from a nationally recognized rating agency, where the size and estimated cost of the project justify such an assessment. Additionally, DOE is proposing to require not later than 30 days prior to closing, that Applicants provide a credit rating from a nationally recognized rating agency reflecting the Final Term Sheet for the project without a Federal guarantee. The Department requests comment as to whether it should establish a project size (dollar) threshold below which the Department would have authority to waive this credit rating requirement.

G. Eligible Lenders

In further support of DOE's objective to ensure full repayment of debt, consistent with section 20320(b)(2) of the CR, participating Eligible Lenders or other servicers must meet certain eligibility, monitoring, and performance requirements. These requirements, set forth in sections 609.2 and 609.11 of the proposed regulations, are intended to ensure that the Eligible Lender or other servicer has the financial wherewithal and appropriate experience and expertise to meet its fiduciary obligations in connection with the debt guaranteed by DOE. As provided in proposed section 609.11, Eligible Lenders or other servicers must exercise a high level of care and diligence in the review and evaluation of a project, and in enforcing the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement, and related documents, throughout the term of the Guaranteed Obligation. Moreover, as provided in proposed section 609.11, DOE also expects each Eligible Lender or other servicer to diligently perform its duties in the servicing and collection of the loan or other debt obligation as well as in ensuring that the collateral package securing the loan remains uncompromised. Proposed section 609.11 requires the Eligible Lender or other servicer to provide to DOE regular, periodic financial reports on the status and condition of the loan or other debt obligation, consistent with the terms of the Loan Guarantee Agreement. The Eligible Lender or other servicer is required to notify DOE promptly if it becomes aware of any problems or irregularities concerning the project or the ability of the Borrower to make payment on the loan or other debt obligations.

H. FCRA

The Federal Credit Reform Act of 1990 (FCRA) provides that for any federal credit program, new direct loans and loan guarantees may not be made unless authority has been provided in appropriations Acts(s). *See* 2 U.S.C. 661c(b). Title XVII only authorizes future appropriations action. The Department does not understand section 1702(b) of the Act as constituting either budget authority or other authority to make any individual loan guarantee, as is required by FCRA. Thus, the Department reads the Act and FCRA in harmony, which means that while Title XVII authorizes DOE to carry out the loan guarantee program, the Department may not issue guarantees until it receives new budget authority or is otherwise provided authority to make guarantees in an appropriations Act. While DOE notes that the Government Accountability Office has expressed disagreement with this interpretation, the Department intends to follow its own interpretation of Title XVII and FCRA in carrying out this program.

On February 15, 2007, President Bush signed the CR into law. The CR provides DOE with the necessary authority, consistent with FCRA and Title XVII section 1702, to guarantee, in the aggregate, up to $4 billion in loans for Title XVII projects. The authority to issue guarantees, however, was limited to Borrowers who pay the applicable Credit Subsidy Costs.

I. Default and Audit Provisions

Title XVII, sections 1702(g) and 1702(i), specifically require that DOE promulgate regulations to address default and audit requirements. (42 U.S.C. 16512(g), (i)) Sections 609.15 and 609.17, respectively, address these requirements. These provisions will apply to all loan guarantees issued under the Title XVII program, including those in response to the August 2006 Solicitation.

J. Tax Exempt Debt

Section 103(a) of the Internal Revenue Code (IRC), 26 U.S.C. 103(a), provides that ''gross income'' does not include interest on any state or local bond, with certain exceptions. Section 149(b) of the IRC, 26 U.S.C. 149(b), however, provides that the section 103(a) exclusion from gross income ''shall not apply to a state or local bond if such bond is federally guaranteed.'' Section 149(b) in effect converts tax exempt debt to taxable debt when such debt is guaranteed by the Federal government. Accordingly, section 609.10 of today's proposed regulations prohibits DOE from directly or indirectly guaranteeing tax exempt obligations.

K. Full Faith and Credit

Section 609.14 of the proposed regulations provides that the full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations. It further provides that the guarantee shall be conclusive evidence that it has been properly obtained, that the underlying loan qualified for the guarantee, and that but for fraud or material misrepresentation by the Holder, is presumed to be valid, legal and enforceable. Section 609.14 is consistent with the model provision set forth in OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables,'' as well as similar provisions in the regulations governing a number of other federal credit programs. The Department maintains a strong interest in ensuring that the debt incurred in order to finance innovative projects eligible for Title XVII loan guarantees can be financed and sold in secondary markets and requests comment on whether the language of section 609.14 needs to be modified in order to accomplish this goal, while at the same time ensuring that the Federal Government is not exposed to undue financial risk because of fraud or misrepresentation.

III. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, and arguments. Written comments should be submitted to the address, and in the form, indicated in the **ADDRESSES** section of this Notice of Proposed Rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, whenever possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11). It is DOE's intention to honor requests for nondisclosure of information by an Applicant or Project Sponsor to the extent permitted under applicable laws.

B. Public Meeting

A public meeting will be held at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this Notice of Proposed Rulemaking. Any person or representative of a group or class of persons who has an interest in this proposed rule may request an opportunity to make an oral presentation. A person wishing to speak must submit his or her request to make an oral presentation to the person and in the manner specified in the **DATES** section of this notice by 4:30 p.m. on the date specified for making such requests. The person should provide a daytime phone number where he or she can be reached. Each oral presentation will be limited to 20 minutes, unless the presiding official determines that the number of persons wishing to speak

warrants a different amount of time. Persons making oral presentations are requested to bring 3 copies of their prepared statement to the meeting and submit them to the registration desk.

DOE reserves the right to select the persons who will speak. DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the meeting. A DOE official will be designated to preside at the meeting. The meeting will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 42 U.S.C. 7191. Any further procedural rules for the conduct of the meeting will be announced by the presiding official.

A transcript of the meeting will be made, and the entire record of this rulemaking will be retained by DOE and made available as provided in the **ADDRESSES** section of this Notice of Proposed Rulemaking.

IV. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs at OMB.

B. National Environmental Policy Act

Through the issuance of this proposed rule, DOE is making no decision relative to the approval of a loan guarantee for a particular proposed project. DOE has, therefore, determined that publication of the proposed rule is covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required at this time. However, appropriate NEPA project review will be conducted prior to execution of a Loan Guarantee Agreement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*.

DOE is not obliged to prepare a regulatory flexibility analysis for this rulemaking because there is no requirement to publish a general notice of proposed rulemaking for loan guarantee rules under the Administrative Procedure Act (5 U.S.C. 553).

D. Paperwork Reduction Act

Proposed sections 609.4 and 609.6 provide that Pre-Applications and Applications for loan guarantees submitted to DOE in response to a solicitation must contain certain information. This information will be used by DOE to determine if a project sponsor who submits a Pre-Application will be invited to submit an Application for a loan guarantee; to determine if a project is eligible for a loan guarantee; and to evaluate Applications under criteria specified in the proposed rule. Proposed § 609.17 provides that borrowers must submit to DOE annual project performance reports and audited financial statements along with other information. DOE will use this information to evaluate the progress of projects for which loan guarantees are issued. DOE has submitted this collection of information to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

DOE estimates that the annual reporting and recordkeeping burden for this collection of information will be 13,000 hours per year at a total annual cost of $1,750,000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Interested persons are invited to submit comments to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the **ADDRESSES** section of this notice. OMB is particularly interested in comments on: (1) The necessity of the proposed information collection requirements, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be maintained; and (4) ways to minimize the burden of the requirements on respondents.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Act) (2 U.S.C. 1531 *et seq.*) requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments.

The term ''federal mandate'' is defined in the Act to mean a federal intergovernmental mandate or a federal private sector mandate (2 U.S.C. 658(6)). Although the rule will impose certain requirements on non-federal governmental and private sector applicants for loan guarantees, the Act's definitions of the terms ''federal intergovernmental mandate'' and ''federal private sector mandate'' exclude, among other things, any provision in legislation, statute, or regulation that is a condition of federal assistance or a duty arising from participation in a voluntary program (2 U.S.C. 658(5) and (7), respectively). Today's rule establishes requirements that persons voluntarily seeking loan guarantees for projects that would use certain new and improved energy technologies must satisfy as a condition of a federal loan guarantee. Thus, the rule falls under the exceptions in the definitions of ''federal intergovernmental mandate'' and ''federal private sector mandate'' for requirements that are a condition of federal assistance or a duty arising from

participation in a voluntary program. The Act does not apply to this rulemaking.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on May 10, 2007.

James T. Campbell,

Acting Chief Financial Officer.

For the reasons stated in the Preamble, DOE proposes to amend chapter II of title 10 of the Code of Federal Regulations by adding a new part 609 as set forth below.

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

Sec.

Authority: 42 U.S.C. 7254, 16511–16514.

§ 609.1 Purpose and Scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and, after consultation with the Department of the Treasury, approving applications for loan guarantees to support Eligible Projects under Title XVII of the Energy Policy Act of 2005.

(b) Except as set forth in paragraph (c) of this section, this part applies to all Pre-Applications, Applications, Conditional Commitments and Loan Guarantee Agreements to support Eligible Projects under Title XVII of the Energy Policy Act of 2005.

(c)(1) This part shall not apply to any Pre-Applications, Applications, Conditional Commitments or Loan

Guarantee Agreements under the Guidelines issued by DOE on August 8, 2006, which were published in the **Federal Register** on August 14, 2006 (71 FR 46451) and the solicitation issued on August 8, 2006 under Title XVII of the Energy Policy Act of 2005, provided the Pre-Application is accepted under the Guidelines and an Application is invited pursuant to such Pre-Application no later than December 31, 2007.

(2) Notwithstanding paragraph (c)(1) of this section, §§ 609.15 and 609.17 shall apply to any Loan Guarantee Agreement entered into pursuant to or in response to DOE's August 8, 2006 solicitation.

(3) Notwithstanding paragraph (c)(1) of this section, DOE and any Applicant who submitted an Application under the August 8, 2006 solicitation may agree to make additional provisions of this part applicable to the particular project.

(d) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 609.2 Definitions.

Act means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514).

Administrative Cost of Issuing a Loan Guarantee means the total of all administrative expenses that DOE incurs during:

(1) The evaluation of a Pre-Application and an Application for a loan guarantee;

(2) The offering of a Term Sheet, executing the Conditional Commitment, negotiation, and closing of a Loan Guarantee Agreement; and

(3) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project, and the potentially higher costs of servicing and monitoring trouble loans.

Applicant means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other business entity or governmental non-Federal entity that has submitted an Application to DOE and has the authority to enter into a Loan Guarantee Agreement with DOE under the Act.

Application means a comprehensive written submission in response to a solicitation or a written invitation from DOE to apply for a loan guarantee.

Borrower means any Applicant who enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

Commercial Technology means a technology in general use in the commercial marketplace in the United States, but does not include a technology solely by use of such technology in a demonstration project funded by DOE. A technology is in general use if it: [Alternative 1: Has been ordered for, installed in, or used in five or more projects in the United States] [Alternative 2: Has been in operation in a commercial project in the United States for a period of five years, as measured beginning on the date the technology was commission on a project.]

Conditional Commitment means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that the Applicant thereafter satisfies all specified and precedent funding obligations, and all other contractual, statutory, regulatory or other requirements. A Conditional Commitment imposes no obligation on the Secretary to execute the Loan Guarantee Agreement.

Contracting Officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer and/or terminate contracts on behalf of DOE.

Credit Subsidy Cost has the same meaning as ''cost of a loan guarantee'' in section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is the net present value, at the time the Loan Guarantee Agreement is executed, of the following estimated cash flows:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; less

(2) Payments to the Government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement Fees paid to DOE pursuant to Section 1702(h) to cover the applicable administrative expenses for the loan guarantee are excluded from the calculation.

DOE means the United States Department of Energy.

Eligible Lender means:

(1) Any person or legal entity formed for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders; and

(2) Any person or legal entity that meets the requirements of § 609.11 of this part, as determined by DOE.

Eligible Project means a project located in the United States that employs a New or Significantly Improved Technology that is not a commercial technology, and that meets all applicable requirements of section 1703 of the Act (42 U.S.C. 16513), the applicable solicitation and this part.

Guaranteed Obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act.

Holder means any person or legal entity that owns a Guaranteed Obligation or has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation, including any nominee or trustee empowered to act for the Holder or Holders.

Loan Agreement means a written agreement between a Borrower and an Eligible Lender or other Holder containing the terms and conditions under which the Eligible Lender or other Holder will make loans to the Borrower to start and complete an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into by DOE and a Borrower, an Eligible Lender or other Holder, pursuant to the Act, establishes the obligation of DOE to guarantee the payment of principal and interest on specified Guaranteed Obligations of a Borrower to Eligible Lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement.

New or Significantly Improved Technology means a technology concerned with the production, consumption or transportation of energy, and that has either only recently been discovered or learned, or that involves or constitutes one or more meaningful and important improvements in the productivity or value of the technology.

Pre-Application means a written submission in response to a DOE solicitation that broadly describes the project proposal, including the proposed role of a DOE loan guarantee in the project, and the eligibility of the project to receive a loan guarantee under the Act and this part.

Project Costs means those costs, including escalation and contingencies, that are to be expended or accrued by

Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.12 of this part. Project costs do not include costs for the items set forth in § 609.12(c) of this part.

Project Sponsor means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, or the Applicant.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Term Sheet means an offering document issued by DOE that specifies the general terms and conditions under which DOE anticipates that it may guarantee payment of principal and accrued interest on specified loans or other debt obligations of a Borrower in connection with an Eligible Project. A Term Sheet is not a loan Guarantee Agreement and imposes no obligation on the Secretary to execute a Loan Guarantee Agreement.

United States means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any territory or possession of the United States of America.

§ 609.3 Solicitations.

(a) DOE may issue solicitations to invite the submission of Pre-Applications or Applications for loan guarantees for Eligible Projects. DOE must issue a solicitation before proceeding with other steps in the loan guarantee process including issuance of a loan guarantee.

(b) Each solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that solicitation;

(2) The place and time for response submission;

(3) The name and address of the DOE representative whom a potential Project Sponsor may contact to receive further information and a copy of the solicitation;

(4) The form, format, and page limits applicable to the response submission;

(5) The amount of the application fee (First Fee), if any, that will be required;

(6) The programmatic, technical, financial and other factors the Secretary will use to evaluate response submissions, and the relative weightings that DOE will use when evaluating those factors; and

(7) Such other information as DOE may deem appropriate.

§ 609.4 Submission of Pre-Applications.

In response to a solicitation requesting the submission of Pre-Applications, either Project Sponsors or Applicants may submit Pre-Applications to DOE. Pre-Applications must meet all requirements specified in the solicitation and this part. Only one Pre-Application may be submitted per project. At a minimum, each Pre-Application must contain all of the following:

(a) A cover page signed by an individual with full authority to bind the Project Sponsor or Applicant that attests to the accuracy of the information in the Pre-Application, and that binds the Project Sponsor(s) or Applicant to the commitments made in the Pre-Application;

(b) An executive summary briefly encapsulating the key project features and attributes of the proposed project;

(c) A business plan which includes an overview of the proposed project, including:

(1) A description of the Project Sponsor, including all entities involved, and its experience in project investment, development, construction, operation and maintenance;

(2) A description of the new or significantly improved technology to be employed in the project, including:

(i) A report detailing its successes and failures during the pilot and demonstration phases;

(ii) The technology's commercial applications;

(iii) The significance of the technology to energy use or emission control;

(iv) How and why the technology is ''new'' or ''significantly improved'' compared to technology already in general use in the commercial marketplace in the United States;

(v) The owners or controllers of the intellectual property incorporated in and utilized by such technologies; and

(vi) The manufacturer(s) and licensee(s), if any, authorized to make the technology available in the United States, the potential for replication of commercial use of the technology in the United States, and whether and how the technology is or will be made available in the United States for further commercial use.

(3) The estimated amount, in reasonable detail, of the total Project Costs;

(4) The timeframe required for construction and commissioning of the project; and

(5) A description of any primary off-take or other revenue-generating agreements that will provide the primary sources of revenues for the project, including repayment of the debt obligations for which loan a guarantee is sought.

(d) A financing plan overview describing:

(1) The amount of equity to be invested and the sources of such equity;

(2) The amount of the total debt obligations to be incurred and the funding sources of all such debt:

(3) The amount of the Guaranteed Obligation as a percentage of total project debt; and as a percentage of that total project cost; and

(4) A financial model detailing the investments in and the cash flows generated and anticipated from the project over the project's expected life-cycle, including a complete explanation of the facts, assumptions, and methodologies in the financial model.

(e) An explanation of what estimated impact the loan guarantee will have on the interest rate, debt term, and overall financial structure of the project;

(f) A copy of a commitment letter from an Eligible Lender or other Holder expressing its commitment to provide the required debt financing necessary to construct and fully commission the project;

(g) A copy of the equity commitment letter(s) from each of the Project Sponsors and a description of the sources for such equity;

(h) An overview of how the project complies with the eligibility requirements in section 1703 of the Act (42 U.S.C. 16513);

(i) An outline of the potential environmental impacts of the project and how these impacts will be mitigated;

(j) A description of the anticipated air pollution and/or anthropogenic greenhouse gas reduction benefits and how these benefits will be measured and validated;

(k) A list of all of the requirements contained in this part and the solicitation and where in the Pre-Application these requirements are addressed; and

(l) A commitment to pay the Application fee (First Fee), if invited to submit an Application.

§ 609.5 Evaluation of Pre-Applications.

(a) Where Pre-Applications are requested in a solicitation, DOE will

conduct an initial review of the Pre-Application to determine whether:

(1) The proposal is for an Eligible Project;

(2) The submission contains the information required by § 609.4 of this part; and

(3) The submission meets all other requirements of the applicable solicitation.

(b) If a Pre-Application fails to meet the requirements of paragraph (a) of this section, DOE may deem it non-responsive and eliminate it from further review. DOE will notify any Project Sponsor whose Pre-Application has been eliminated from further review under this subsection.

(c) If DOE deems a Pre-Application responsive, DOE will evaluate the commercial viability of the proposed project, the technology to be employed in the project, relevant experience of the principal(s) and the financial capability of the Project Sponsor (including personal and/or business credit information of the principal(s)) to determine if there is sufficient information in the Pre-Application to assess the technical and commercial viability of the proposed project and/or the financial capability of the Project Sponsor and to assess other aspects of the Pre-Application. DOE may ask for additional information from the Project Sponsor during the review process and may request one or more meetings with the Project Sponsor.

(d) After reviewing a Pre-Application and other information acquired under paragraph (c) of this section, DOE may provide a written response to the Project Sponsor or Applicant either inviting the Applicant to submit an Application for a loan guarantee and specifying the amount of the Application filing fee or advising the Project Sponsor that the project proposal will not receive further consideration. Neither the Pre-Application nor any written or other feedback that DOE may provide in response to the Pre-Application eliminates the requirement for an Application.

(e) No response by DOE to, or communication by DOE with, a Project Sponsor, or an Applicant submitting a Pre-Application or subsequent Application shall impose any obligation on DOE to issue a loan guarantee for a project.

§ 609.6 Submission of Applications.

(a) In response to a solicitation or written invitation to submit an Application, an Applicant submitting an Application must meet all requirements and provide all information specified in the solicitation and/or invitation and this part. There may be only one Applicant per project.

(b) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant and the Project Sponsors;

(2) Payment of the Application filing fee (First Fee) for the Pre-Application, if any, and Application phase;

(3) A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, if a Pre-Application was requested in the solicitation, including any changes in the proposed project's financing structure or terms;

(4) A description of how and to what measurable extent the project avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those benefits;

(5) A description of the nature and scope of the proposed project, including:

(i) Key milestones;

(ii) Location of the project;

(iii) Identification and commercial feasibility of the new or significantly improved technology(ies) to be employed in the project;

(iv) How the Applicant intends to employ such technology(ies) in the project; and

(v) How the Applicant intends to assure the further commercial availability of the technology(ies) in the United States.

(6) A detailed explanation of how the proposed project qualifies as an Eligible Project;

(7) A detailed estimate of the estimated total Project Costs together with a description of the methodology and assumptions used;

(8) A detailed description of the engineering and design contractor(s), construction contractor(s), equipment supplier(s), and construction schedules for the project, including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;

(9) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(10) A description of the management plan of operations to be employed in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

(11) A detailed description of the project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(12) An analysis of the market for any product to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

(13) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity, and debt, and the liability of parties associated with the project over the term of the Loan Guarantee Agreement;

(14) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operations and maintenance of the project;

(15) A copy of the financial closing checklist for the equity and debt;

(16) Applicant's business plan on which the project is based and Applicant's financial model presenting project *pro forma* statements for the proposed term of the Guaranteed Obligations including income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(17) Financial statements for the past three years, or less if the Applicant has been in operation less than three years, that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and parties providing Applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the Applicant;

(18) A copy of all legal opinions, and other material reports, analyses, and reviews related to the project;

(19) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address: The project's

siting and permitting, engineering and design, contractual requirements, environmental compliance, testing and commissioning and operations and maintenance.

(20) Credit history of the Applicant and, if appropriate, any party who owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the project or the Applicant;

(21) A credit assessment, for the project without a loan guarantee from a nationally recognized rating agency, where the size and estimated cost of the project justify such an assessment;

(22) A list showing the status of and estimated completion date of Applicant's required project-related applications or approvals for Federal, state, and local permits and authorizations to site, construct, and operate the project;

(23) A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements, and that will enable DOE to undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(24) A listing and description of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the Guarantee Obligations, including appropriate data as to the value of the assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(25) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guarantee Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based;

(26) Written affirmation from an officer of the Eligible Lender or other Holder confirming that it is in good standing with DOE's and other Federal agencies' loan guarantee programs;

(27) A list of all of the requirements contained in this part and the solicitation and where in the Application these requirements are addressed;

(28) A statement from the Applicant that it believes that there is ''reasonable prospect'' that the Guaranteed Obligations will be fully paid from project revenue; and

(29) Any other information requested in the invitation to submit an Application or requests from DOE in order to clarify an Application;

(c) DOE will not consider any Application complete unless the Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Applicant to the commitments and representations made in the Application.

§ 609.7 Programmatic, Technical and Financial Evaluation of Applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those to whom a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the applicable solicitation, and this part. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential loan guarantee. Applications will be denied if:

(1) The project will be built or operated outside the United States;

(2) The project does not avoid, reduce, or sequester air pollutants or anthropogenics emissions of greenhouse gases;

(3) The project is not ready to be employed commercially in the United States, cannot be replicated, cannot yield a commercially viable product or service in the use proposed in the project, does not have the potential to be employed in other commercial projects in the United States, and is not or will not be available for further commercial use in the United States;

(4) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in Section 609.11 of this part;

(5) The project is for demonstration, research, or development; or

(6) The applicant will not provide a significant equity contribution.

(b) In evaluating Applications, DOE will consider the following factors:

(1) To what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouses gases;

(2) To what extent the new or significantly improved technology to be employed in the project, as compared to commercial technology in general service in the United States, is ready to be employed commercially in the United States, can be replicated, yields a commercial viable project or service in the use proposed in the project, has potential to be employed in other commercial projects in the United States, and is or will be available for further commercial use in the United States;

(3) To the extent that the new or significantly improved technology used in the project constitutes an important improvement in technology used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and the Applicant has a plan to advance, or assist in the advancement, of that technology into the commercial marketplace;

(4) The extent to which the requested amount of the loan guarantee, and requested amount of Guaranteed Obligations are reasonable relative to the nature and scope of the project;

(5) The total amount and nature of the Eligible Project Costs and the extent to which Project Costs are funded by Guaranteed Obligations;

(6) The likelihood that the project will be ready for full commercial operations in the timeframe stated in the Applications;

(7) The amount of equity commitment to the project by the Applicant and other principals involved in the project;

(8) Whether there is sufficient evidence that Applicant will diligently pursue the project, including initiating and completing the project in a timely manner;

(9) Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the project and how such assistance will impact the project;

(10) The feasibility of the project and likelihood that the project will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(11) The levels of safeguards provided to the Federal government in the event of default through collateral, warranties, and other assurance of repayment described in the Application;

(12) The Applicant's capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personal experience;

(13) The ability of the applicant to ensure that the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(14) The levels of market, regulatory, legal, financial, technological, and other risks associated with the project and their appropriateness for a loan guarantee provided by DOE;

(15) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the project; and

(16) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) During the Application review process DOE may raise issues or concerns that were not raised during the Pre-Application review process where a Pre-Application was requested in the applicable solicitation.

(d) If DOE determines that a project may be suitable for a loan guarantee, DOE will notify the Applicant and Eligible Lender or other Holder in writing and provide them with a Term Sheet. If DOE reviews an Application and decides not to proceed further with the issuance of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial.

§ 609.8 Term Sheets and Conditional Commitments.

(a) DOE may determine, after review and evaluation of the Application, additional information requested and received by DOE, and information obtained as the result of meeting with the Applicant and the Eligible Lender or other Holder, that it would be appropriate to offer detailed terms and conditions that must be met, including terms and conditions that must be met by the Applicant and the Eligible Lender or other Holder before DOE may enter into a Loan Guarantee Agreement.

(b) The terms and conditions required by DOE will be expressed in a written Term Sheet signed by a Contracting Officer and addressed to the Applicant and the Eligible Lender or other Holder. The Term Sheet will request that the Project Sponsor and the Eligible Lender or other Holder express agreement with the terms and conditions contained in the Term Sheet by signing the Term Sheet in the designated place. Each person signing the Term Sheet must be a duly authorized official or officer of the Applicant and Eligible Lender or other Holder. The Term Sheet will include an expiration date on which the terms offered will expire unless the Contracting Officer agrees in writing to extend the expiration date.

(c) The Applicant and/or the Eligible Lender or other Holder may respond to the Term Sheet offer in writing or may request discussions or meetings on the terms and conditions contained in the Term Sheet, including requests for clarifications or revisions. When DOE, the Applicant and the Eligible Lender or other Holder agree on all of the final terms and conditions and all parties sign the Term Sheet, the Term Sheet becomes a Conditional Commitment. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement, but neither party is legally obligated to do so.

(d) The Applicant is required to pay fees to DOE to cover the Administrative Cost of Issuing a Loan Guarantee for the period of the Term Sheet through the closing of the Loan Guarantee Agreement (Second Fee).

§ 609.9 Closing On the Loan Guarantee Agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE will set a closing date for the Loan Guarantee Agreement.

(b) By the closing date, the Applicant and the Eligible Lender or other Holder must have satisfied all of the detailed terms and conditions contained in the Conditional Commitment and other related documents and any other contractual, statutory, regulatory or other requirements have been met. If the Applicant and the Eligible Lender or other Holder has not satisfied all such terms and conditions by the closing date, the Secretary may, in his sole discretion, set a new closing date or terminate the Conditional Commitment.

(c) In order to enter into a Loan Guarantee Agreement at closing:

(1) DOE must have received authority in an appropriations act for the loan guarantee; and

(2) All other applicable statutory, regulatory, or other requirements must be fulfilled.

(d) Prior to, or on, the closing date, DOE will ensure that:

(1) Pursuant to section 1702(b) of the Act, DOE has received payment of the Credit Subsidy Cost of the loan guarantee, as defined in § 609.2 of this part from *either* (but not from a combination) of the following:

(i) A Congressional appropriation of funds; or

(ii) A payment from the Borrower;

(2) Pursuant to section 1702(h) of the Act, DOE has received from the Borrower the First and Second Fees and, if applicable, the Third fee for the Administrative Cost of Issuing the Loan Guarantee, as specified in the Loan Guarantee Agreement;

(3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the loan guarantee;

(4) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

(5) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States; and

(6) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by a Contracting Officer and all other applicable contractual, statutory, and regulatory requirements are satisfied.

(e) Not later than the period approved in writing by the Contracting Officer, which may not be less than 30 days prior to the closing date, the Applicant must provide updated project financing information and a new final Term Sheet must be executed by DOE and the Applicant if the terms and conditions of the financing arrangements changed between execution of the Conditional Commitment and that date (Final Term Sheet).

(f) Not later than 30 days prior to closing, the applicant must provide a credit rating from a nationally recognized rating agency reflecting the Final Term Sheet for the project without a Federal guarantee.

(g) Changes in the terms and conditions of the financing arrangements will affect the credit subsidy cost for the loan guarantee agreement. DOE may postpone the expected closing date pursuant to any changes submitted under paragraph (e) of this section. In addition, DOE may choose to terminate the Conditional Commitment.

§ 609.10 Loan Guarantee Agreement.

(a) Only a Loan Guarantee Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate DOE to guarantee loans or other debt obligations.

(b) DOE is not bound by oral representations made during the Pre-Application, if Pre-Applications were solicited, or Application stage, or during any negotiation process.

(c) Except if explicitly authorized by an Act of Congress, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for Credit Subsidy Costs, administrative fees, or other fees charged by or paid to DOE relating to the Title XVII program or any loan guarantee thereunder.

(d) Prior to the execution by DOE of a Loan Guarantee Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Loan Guarantee Agreement, are satisfied:

(1) The project qualifies as an Eligible Project under the Act and is not a research, development, or demonstration project or a project that employs commercial technologies that are in ''general use'' in the United States;

(2) The project will be constructed and operated in the United States, the employment of the new or significantly improved technology in the project has the potential to be replicated in other commercial projects in the United States, and this technology is or is likely to be available in the United States for further commercial application;

(3) The face value of the debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs and the loan guarantee is limited to no more than 90 percent of the total face value of the loans(s) or other debt obligation(s);

(4) The guaranteed portion of a loan, or any portion of the guaranteed portion of a loan, will not be separated from or ''stripped'' from the non-guaranteed portion of the loan, if the loan is participated, syndicated or otherwise resold in the secondary debt market;

(5) The Borrower and other principals involved in the project have made or will make a significant equity investment in the project;

(6) The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other project debt over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices;

(7) The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations;

(8) The amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds;

(9) There is a reasonable prospect of repayment by Borrower of the principal of and interest on the, Guaranteed Obligations and other project debt;

(10) The Borrower has pledged project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;

(11) The Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted project;

(12) The interest rate on the guaranteed loan is determined by DOE, after consultation with the Treasury Department, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government;

(13) The Guaranteed Obligation is not subordinate to any loan or other debt obligation and is in a first lien position on all assets of the project and all additional collateral pledged as security for the Guaranteed Obligations and other project debt;

(14) There is satisfactory evidence that Borrower and Eligible Lenders are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligation and other debt obligation and the Loan Guarantee Agreement, and will diligently pursue the project;

(15) The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing a Loan Guarantee for the construction and operational phases of the project (Third Fee), as specified in the Conditional Commitment.

(16) The Eligible Lender, other Holder or servicer has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation.

(17) If Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by DOE prior to, or at the time of, closing;

(18) DOE or its representatives have access to the project site at all reasonable times in order to monitor the performance of the project;

(19) DOE, the Eligible Lender and Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;

(20) The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(21) Borrower has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

(22) The Loan Guarantee Agreement contains such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States; and

(23) The Lender is an Eligible Lender, as defined in § 609.2 of this part, and meets DOE's lender eligibility, monitoring and performance criteria in § 609.11 of this part.

(e) The Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:

(1) Interest accrues on the Guaranteed Obligations at the rate stated in the Loan Guarantee Agreement or Loan Agreement until DOE makes full payment of the defaulted Guaranteed Obligations and DOE is not required to pay any premium, default penalties, or prepayment penalties;

(2) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights and has superior rights in and to the property acquired from the recipient of the payment as provided in § 609.15 of this part.

(3) The Eligible Lender or other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations.

(4) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations.

(f) The Loan Guarantee Agreement must contain audit provisions which provide, in substance, as follows:

(1) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project as are necessary to facilitate an effective and accurate audit and performance evaluation of the project as required in section 609.17 of this part.

(2) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent

books, documents, papers, and records of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in section 609.17 of this part.

(g) The Loan Guarantee Agreement must contain provisions related to the assignment or transfer of Guaranteed Obligations which provide that:

(1) The Eligible Lender must provide written notification to DOE prior to any assignment or transfer of any portion of a Guaranteed Obligation, or any pledge or other use of a Guaranteed Obligation as security, including but not limited to any derivatives transaction.

(2) An Eligible Lender or other Holder may assign or transfer a Guaranteed Obligation covered under the Loan Guarantee Agreement to another Eligible Lender that meets the requirements of § 609.11 of this part. Such Eligible Lender to which a Guaranteed Obligation is assigned or transferred, is required to fulfill all servicing, requirements monitoring, and reporting contained in the Loan Guarantee Agreement and these regulations if the transferring Eligible Lender was forming these functions. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE.

§ 609.11 Lender Eligibility, Monitoring and Performance Requirements.

(a) An Eligible Lender shall meet the following requirements:

(1) Be a ''qualified institutional buyer,'' as defined in 17 CFR 230.144A(a), including a qualified retirement plan, or governmental plan;

(2) Not be debarred or suspended from participation in a Federal government contract (under 48 CFR part 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR Part 180);

(3) Not be delinquent on any Federal debt or loan;

(4) Be legally authorized to enter into loan guarantee transactions authorized by the Act and these regulations and is in good standing with DOE and other Federal agency loan guarantee programs;

(5) Be able to demonstrate, or has access to, experience in originating and servicing loans for commercial projects similar in size and scope to the project under consideration; and

(6) Be able to demonstrate experience or capability as the lead lender or underwriter by presenting evidence of its participation in other energy-related projects.

(b) When performing its duties to review and evaluate a proposed Eligible Project prior to the submission of a Pre-Application or Application, as appropriate, by the Project Sponsor through the execution of a Loan Guarantee Agreement, and subsequently when performing the loan servicing duties during the term of the Loan Guarantee Agreement, the Eligible Lender or other servicer shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating, disbursing and servicing a loan made by it without a Federal guarantee, including:

(1) During the construction period, enforcing all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement and related documents;

(2) During the operational phase, monitoring and servicing the Debt Obligations and collection of the outstanding principal and accrued interest as well as ensuring that the collateral package securing the Guaranteed Obligations remains uncompromised; and

(3) As specified by DOE, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or other debt obligations.

(c) Even though DOE may rely on the Eligible Lender or other servicer to service and monitor the Guaranteed Obligation, DOE will also conduct its own monitoring and review of the Eligible Project.

§ 609.12 Project Costs.

(a) Before entering into a Loan Guarantee Agreement, DOE shall determine the estimated Project Costs for the project that is the subject of the agreement. To assist the Department in making that determination, the Applicant must estimate, calculate and record all such costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the project in accordance with generally accepted accounting principles and practices. Among other things, the Applicant must calculate the sum of necessary, reasonable and customary costs that it has paid and expects to pay, which are directly related to the project, including costs for escalation and contingencies, to estimate the total Project Costs.

(b) Project Costs include, but are not limited to:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel and transportation for facility design, construction, startup, commissioning and shakedown;

(3) Costs of equipment purchases;

(4) Costs to provide equipment, facilities, and services related to safety and environmental protection;

(5) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) The cost of issuing project debt, such as fees, transaction and legal costs and other normal charges imposed by Lenders and other Holders;

(7) Costs of necessary and appropriate insurance and bonds of all types;

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project;

(10) A reasonable contingency reserve to cover the possibility of cost increases during the processing of the application and during construction; and

(11) Capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction.

(12) Other necessary and reasonable costs approved by DOE; and

(c) Project Costs do not include:

(1) Fees and commissions charged to Borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Research, development, and demonstration costs of readying the

innovative energy or environmental technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the project, as determined by DOE; and

(7) Borrower-paid Credit Subsidy Costs and the Administrative Cost of Issuing a Loan Guarantee; and

(8) Expenses incurred after startup, commissioning, and shakedown before the facility has been placed in service.

§ 609.13 Principal and Interest Assistance Contract.

With respect to the guaranteed portion of any Guaranteed Obligation, and subject to the availability of appropriations, DOE may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the guaranteed portion of the Guaranteed Obligation, if DOE finds that:

(a) Borrower:

(1) Is unable to meet the payments and is not in default; and

(2) Will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, if any, and other debt obligations of the project, or an agreement, approved by DOE, has otherwise been reached in order to avoid a payment default on non-guaranteed debt;

(b) It is in the public interest to permit Borrower to continue to pursue the purposes of the project;

(c) In paying the principal and interest, the Federal government expects a probable net benefit to the Government will be greater than that which would result in the event of a default;

(d) The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the terms of the Loan Guarantee Agreement; and

(e) Borrower agrees to reimburse DOE for the payment (including interest) on terms and conditions that are satisfactory to DOE and executes all written contracts required by DOE for such purpose.

§ 609.14 Full Faith and Credit and Incontestability.

The full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations issued in accordance with this part with respect to principal and interest. Such guarantee will be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the Holder, such guarantee will be presumed to be valid, legal, and enforceable.

§ 609.15 Default, Demand, Payment, and Collateral Liquidation.

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as ''Holder''), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the Guaranteed Obligation, as provided in paragraph (a) of this section, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement.

(c) In the event that the Borrower has defaulted as described in paragraph (a) of this section and such default is not cured during the grace period provided in the Loan Guarantee Agreement, the Secretary shall notify the U.S. Attorney General and may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without the need for consent or other action on the part of the Holders of the Guaranteed Obligations). In the event the Borrower is in default as described in paragraph (b) of this section, where the Secretary determines in writing that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Loan Guarantee Agreement to cure such default. If the default is not cured during the period of grace, the Secretary may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without any need for consent or other action on the part of the Holders of the Guaranteed Obligations).

(d) No provision of this regulation shall be construed to preclude forbearance by the Holder with the consent of the Secretary for the benefit of the Borrower.

(e) Upon the making of demand for payment as provided in paragraph (a) or (b) of this section, the Holder shall provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, such supporting documentation as may be reasonably required to justify such demand.

(f) Payment as required by the Loan Guarantee Agreement of the Guaranteed Obligation shall be made 60 days after receipt by the Secretary of written demand for payment, provided that the demand complies with the terms of the Loan Guarantee Agreement, applicable law, the Act, and this part. The Loan Guarantee Agreement shall provide that interest shall accrue to the Holder at the rate stated in the Loan Guarantee Agreement until the Guaranteed Obligation has been fully paid by the Federal government.

(g) The Loan Guarantee Agreement shall provide that, upon payment of the Guaranteed Obligations, the Secretary shall be subrogated to the rights of the Holders and shall have superior rights in and to the property acquired from the Holders. The Holder shall transfer and assign to the Secretary all rights held by the Holder of the Guaranteed Obligation. Such assignment shall include all related liens, security, and collateral rights.

(h) Where the Loan Guarantee Agreement so provides, the Eligible Lender or other Holder, or other servicer, as appropriate, and the Secretary may jointly agree to a plan of liquidation of the assets pledged to secure the Guaranteed Obligation.

(i) Where payment of the Guaranteed Obligation has been made and the Eligible Lender or other Holder or other servicer has not undertaken a plan of liquidation, the Secretary, in accordance with the rights received through subrogation and acting through the U.S.

Attorney General, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

(j) If the Secretary is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or otherwise dispose of any property acquired pursuant to the Loan Guarantee Agreement or take any other necessary action which the Secretary deems appropriate, in order that the original goals and objectives of the project will, to the extent possible, be realized.

(k) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Loan Guarantee Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

(l) No action taken by the Eligible Lender or other Holder or other servicer in the liquidation of any pledged assets will affect the rights of any party, including the Secretary, having an interest in the loan or other debt obligations, to pursue, jointly or severally, to the extent provided in the Loan Guarantee Agreement, legal action against the Borrower or other liable parties, for any deficiencies owing on the balance of the Guaranteed Obligations or other debt obligations after application of the proceeds received upon liquidation.

(m) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.

(o) Nothing in this part precludes the Secretary from purchasing the Holder's interest in the project upon liquidation.

§ 609.16 Perfection of Liens and Preservation of Collateral

(a) The Loan Guarantee Agreement and other documents related thereto shall provide that: The Eligible Lender or other Holder or other servicer will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the guaranteed portion of the loan; and upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. The Secretary shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary. Except as provided in § 609.15, no party may waive or relinquish, without the consent of the Secretary, any collateral securing the Guaranteed Obligation to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

§ 609.17 Audit and Access to Records

(a) The Loan Guarantee Agreement and related documents shall provide that:

(1) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Pre-Application, Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or the servicer or otherwise, and may exclude or reduce the amount of any item which the Secretary determines to be unnecessary or excessive, or otherwise not to be an item of Project Costs. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to Project Costs, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

§ 609.18 Deviations.

To the extent that such requirements are not specified by the Act or other applicable statutes, DOE may authorize deviations on an individual request basis from the requirements of this part (except environmental considerations and requirements) upon a finding that such deviation is essential to program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government. Recommendation for any deviation shall be submitted in writing to DOE. Such recommendations must include a supporting statement, which indicates briefly the nature of the deviation requested and the reasons in support thereof. Any deviation, however, that was not captured in the Credit Subsidy Cost will require either additional fees or discretionary appropriations.

[FR Doc. E7–9297 Filed 5–15–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27860; Directorate Identifier 2007–CE–034–AD]

RIN 2120–AA64

Airworthiness Directives; Allied Ag Cat Productions, Inc. (Type Certificate No. 1A16 Formerly Held by Schweizer Aircraft Corp.) G–164 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 82–07–04, which applies to certain Allied Ag Cat Productions, Inc. (Ag Cat) G–164 series airplanes. AD 82–07–04 currently requires you to modify the fuel shut-off valve control by installation of a new stop-plate. Since we issued AD 82–07–04, we have determined the need to add airplane models and serial numbers that were not previously included in the applicability. Consequently, this proposed AD would retain the actions of AD 82–07–04 and add airplane models and serial numbers to the applicability. We are proposing this AD to prevent turning the fuel shut-off valve clockwise past the ''ON'' position stop which, if not corrected, could allow the fuel valve to be rotated to an unplacarded ''OFF'' position. This condition could lead to reduced fuel flow and consequent loss of engine power.

DATES: We must receive comments on this proposed AD by July 16, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

For service information identified in this proposed AD, contact Allied Ag Cat Productions, Inc., 301 West Walnut Street, P.O. Box 482, Walnut Ridge, Arkansas 72479; telephone: (870) 866–2111.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5051; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–27860; Directorate Identifier 2007–CE–034–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

A determination that the fuel shut-off valve handle could be rotated clockwise past the ''ON'' position stop to an unplacarded ''OFF'' position on certain Ag Cat G–164 series airplanes caused us to issue AD 82–07–04, Amendment 39–4355 (47 FR 13788, April 1, 1982). AD 82–07–04 currently requires you to modify the fuel shut-off valve control by installation of a new stop-plate on certain Ag Cat G–164 series airplanes.

Since issuing AD 82–07–04, we have determined the need to add airplane models and serial numbers that were not previously included in the applicability.

This condition, if not corrected, could lead to reduced fuel flow and consequent loss of engine power.

Relevant Service Information

We have reviewed Schweizer Aircraft Corp. Ag-Cat Service Bulletin No. 78, dated January 26, 1982.

The service information describes procedures for modification of the fuel shut-off control by installation of a part number A1552–71 stop-plate.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 82–07–04 with a new AD that would retain the actions of AD 82–07–04 and add models and serial numbers to the applicability. This proposed AD would require you to use the service information described previously to perform these actions.

Differences Between This Proposed AD and the Service Information

This proposed AD affects additional models and serial numbers airplanes compared to the list in the applicability section of the service information. The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 1,400 airplanes in the U.S. registry, including those airplanes affected by AD 82–07–04.

We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2.5 work-hours × $80 per hour = $200	$500	$700	$980,000

We based our fleet cost estimate on all airplanes needing the modification. We have no way of knowing which airplanes already have modified the fuel shut-off control per AD 82–07–04. We also have no way of knowing how many airplanes have been retrofitted with the Gemini fuel shut-off valve part number

3/4–86–6–RT–6 (A3580–1) without incorporating AD 82–07–04.

The estimated total cost on U.S. operators includes the cumulative costs associated with those airplanes affected by AD 82–07–04 and those airplanes being added in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 82–07–04, Amendment 39–4355 (47 FR 13788, April 1, 1982), and adding the following new AD:

Allied Ag Cat Productions, Inc. (Type Certificate No. 1A16 formerly held by Schweizer Aircraft Corp.): Docket No. FAA–2007–27860; Directorate Identifier 2007–CE–034–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by July 16, 2007.

Affected ADs

(b) This AD supersedes AD 82–07–04, Amendment 39–4355.

Applicability

(c) This AD applies to the following model and serial number airplanes that are certificated in any category and have Gemini fuel shut-off valve part number (P/N) 3/4–86–6–RT–6 (A3580–1) installed:

(1) *Group 1 (maintains the actions from AD 82–07–04)*:

Model	Serial Nos
(i) G–164A	1726A through 1730A.
(ii) G–164B	335B through 659B.
(iii) G–164C	1C through 44C.
(iv) G–164D	1D through 22D.

(2) *Group 2:*

Model	Serial Nos.
(i) G–164	All.
(ii) G–164A	All except 1726A through 1730A.
(iii) G–164B and G–164B with 73″ wing gap	All except 335B through 659B.
(iv) G–164B–15T	All.
(v) G–164B–20T	All.
(vi) G–164B–34T	All.
(vii) G–164C	All except 1C through 44C.
(iv) G–164D and G–164D with 73″ wing gap	All except 1D through 22D.

Unsafe Condition

(d) This AD results from our determination to add airplane models and serial numbers that were not previously included in the applicability. We are issuing this AD to prevent turning the fuel shut-off valve clockwise past the ''ON'' position which, if not corrected, could allow the fuel valve to be rotated to an unplacarded ''OFF'' position.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Modify the fuel shut-off valve control by installation of a new stop-plate, P/N A1552–71 (or FAA-approved equivalent).	(i) *For Group 1 Airplanes:* Within 100 hours time-in service (TIS) after April 6, 1982 (the effective date of AD 82–07–04). (ii) *For Group 2 Airplanes:* Within 100 hours TIS after the effective date of this AD.	Follow Schweizer Aircraft Corp. Ag-Cat Service Bulletin No. 78, dated January 26, 1982.

Actions	Compliance	Procedures
(2) Do not install any Gemini fuel shut-off valve P/N ¾–86–6–RT–6 (A3580–1) on any airplane unless the stop-plate is installed per paragraph (e)(1) of this AD.	*For all Airplanes:* As of 100 hours TIS after the effective date of this AD.	Follow Schweizer Aircraft Corp. Ag-Cat Service Bulletin No. 78, dated January 26, 1982.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Matt Wilbanks, Aerospace Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5051; fax: (817) 222–5960. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(g) AMOCs approved for AD 82–07–04 are approved for this AD.

Related Information

(h) To get copies of the service information referenced in this AD, contact Allied Ag Cat Productions, Inc., 301 West Walnut Street, P.O. Box 482, Walnut Ridge, Arkansas 72479; telephone: (870) 866–2111. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–27860; Directorate Identifier 2007–CE–034–AD.

Issued in Kansas City, Missouri, on May 9, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9402 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28158; Directorate Identifier 2007–NM–018–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found cases in which the drain mast of the water and waste system does not meet the SFAR–88 (Special Federal Aviation Regulation No. 88) requirements. In case of fuel leakage or fuel vapor release, the proximity of this mast with the fuel tank may cause fuel ignition, leading to a possible tank explosion.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 15, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28158; Directorate Identifier 2007–NM–018–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Avição Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–01–04, effective January 29, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found cases in which the drain mast of the water and waste system does not

meet the SFAR–88 (Special Federal Aviation Regulation No. 88) requirements. In case of fuel leakage or fuel vapor release, the proximity of this mast with the fuel tank may cause fuel ignition, leading to a possible tank explosion.

The MCAI requires replacement of the water and waste system drain masts by new ones bearing a new part number (P/N). You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–38–0013, dated March 24, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 41 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $9,633 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $460,553, or $11,233 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–28158; Directorate Identifier 2007–NM–018–AD.

Comments Due Date

(a) We must receive comments by June 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category; except those that have previously accomplished EMBRAER Service Bulletin 145LEG–38–0015 or 145LEG–38–0020.

Subject

(d) Water/Waste.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found cases in which the drain mast of the water and waste system does not meet the SFAR–88 (Special Federal Aviation Regulation No. 88) requirements. In case of fuel leakage or fuel vapor release, the proximity of this mast with the fuel tank may cause fuel ignition, leading to a possible tank explosion.

The MCAI requires replacement of the water and waste system drain masts by new ones bearing a new part number (P/N).

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 5,000 flight hours or 4 years after the effective date of this AD, whichever occurs first, replace the water and waste system drain masts with P/N 9402.369.00674 by new ones bearing a P/N 9402.369.00675, according to the detailed instructions and procedures described in EMBRAER Service Bulletin 145LEG–38–0013, dated March 24, 2006.

(2) The accomplishment of the detailed instructions and procedures described in EMBRAER Service Bulletin 145LEG–38–0015, dated November 25, 2005; or 145LEG–38–0020, dated February 3, 2006, are acceptable for compliance with the requirements of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer; 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–01–04, effective January 29, 2007, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1.—SOURCES OF RELATED INFORMATION

EMBRAER Service Bulletin—	Revision level—	Dated—
145LEG–38–0005	02	November 20, 2003.
145LEG–38–0013	Original	March 24, 2006.
145LEG–38–0015	Original	November 25, 2005.
145LEG–38–0020	Original	February 3, 2006.

Issued in Renton, Washington, on May 7, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9394 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28159; Directorate Identifier 2006–NM–257–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A300–600, A310–200, and A310–300 series airplanes. The existing AD currently requires inspecting for certain serial numbers on elevators, and doing a detailed inspection, visual inspection with a low-angle light, and tap-test inspection of the upper and lower surfaces of the external skins on certain identified elevators for any damage (i.e., debonding of the graphite fiber reinforced plastic/Tedlar film protection, bulges, debonding of the honeycomb core to the carbon fiber reinforced plastic, abnormal surface reflections, and torn-out plies), and doing corrective actions if necessary. This proposed AD would also require inspecting for damage of the identified elevators in accordance with a new repetitive inspection program, at new repetitive intervals; and would provide

an optional terminating action for the repetitive inspections. This proposed AD results from reports of damage caused by moisture/water inside the elevator. We are proposing this AD to detect and correct debonding of the skins on the elevators, which could cause reduced structural integrity of an elevator and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by June 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–28159; Directorate Identifier 2006–NM–257–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On December 15, 2005, we issued AD 2005–26–17, amendment 39–14438 (70 FR 77301, December 30, 2005), for certain Airbus Model A300–600, A310–200, and A310–300 series airplanes. That AD requires inspecting for certain serial numbers on elevators, and doing a detailed inspection, visual inspection with a low-angle light, and tap-test inspection of the upper and lower surfaces of the external skins on certain identified elevators for any damage (i.e., debonding of the GFRP (graphite fiber reinforced plastic)/Tedlar film protection, bulges, debonding of the honeycomb core to the carbon fiber reinforced plastic, abnormal surface reflections, and torn-out plies), and doing corrective actions if necessary. That AD resulted from reports of debonded skins on the elevators. We issued that AD to detect and correct debonding of the skins on the elevators, which could cause reduced structural integrity of an elevator and reduced controllability of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2005–26–17 specified that we considered the requirements ''interim action'' and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

In addition, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA airworthiness directive 2006–0289, dated November 2, 2006, which renders mandatory a new scheduled inspection program to address the unsafe condition.

Relevant Service Information

Airbus has issued Service Bulletin A300–55–6039 (for Model A300–600 series airplanes) and Service Bulletin A310–55–2040 (for Model A310 series airplanes), both including Appendix 01, both dated June 7, 2006. The service bulletins describe procedures for determining the serial number of the elevator. For elevators with an affected serial number, the service bulletins describe procedures for the following actions:

- A repetitive detailed visual inspection of the external surfaces of the GRFP/Tedlar film protection on the upper and lower skin panels to detect damage (breaks, disbonding, bulges, cracks, plies torn out or peeled off, discontinuity) of the film. For any damage, the service bulletins specify the related investigative action of a local tap-test for disbonding of the bulge and the surrounding area. The service bulletins specify the corrective action for disbonding as removing any disbonded GFRP/Tedlar film before doing the thermographic inspection.
- A repetitive thermographic inspection of the upper and lower skin panels to detect any potential water indication inside the panel's honeycomb core; and related investigative and corrective actions if necessary.
- Related investigative and corrective actions following the thermographic inspection are:
  - For no water indication: Evaluation of the external GFRP/Tedlar film protection for damage (debonding, bulges, cracks, or plies torn out or peeled off), and repair with pore filler if necessary.
  - For water indication: A tap-test on the area to detect damage and honeycomb debonding; do a damage and repair evaluation according to instructions in the structural repair manual (SRM); evaluation of the external GFRP/Tedlar film for damage according to the SRM; and repair with pore filler and/or replacement of the honeycomb core if necessary, or the optional terminating action (described

below). If any damage exceeds certain limits specified in the SRM, the service bulletins specify contacting Airbus for repair instructions.

• Reporting inspection results to Airbus.

• Repairing the external GFRP/Tedlar film with pore filler.

Airbus has also issued Service Bulletin A300–55–6040 (for Model A300–600 series airplanes) and Service Bulletin A310–55–2041 (for Model A310 series airplanes), both dated June 5, 2006. The service bulletins describe procedures for replacing the external GFRP/Tedlar film with an application of pore filler on the whole elevator external surface. Doing this replacement eliminates the need for the repetitive inspections.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued EASA airworthiness directive 2006–0289, dated November 2, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2005–26–17 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference between the Proposed AD and the EASA Airworthiness Directive.''

Difference Between the Proposed AD and the EASA Airworthiness Directive

The EASA airworthiness directive specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the EASA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the EASA approve would be acceptable for compliance with this proposed AD.

Changes to Existing AD

We have clarified the applicability of the existing AD to more closely match the language of the applicability of the EASA airworthiness directive.

Paragraph (g) of the existing AD specifies making repairs or doing alternative inspections using a method approved by either the FAA or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). The EASA has assumed responsibility for the airplane models subject to this proposed AD. Therefore, we have revised paragraph (g) of this proposed AD to specify making repairs or doing alternative inspections using a method approved by the FAA, the DGAC (or its delegated agent), or the EASA (or its delegated agent).

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the Airbus service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Interim Action

We consider this proposed AD interim action. We are currently considering requiring the optional terminating action of replacing the external GFRP/Tedlar film with an application of pore filler on the whole elevator external surface, which would constitute terminating action for the repetitive inspections required by this AD action.

Costs of Compliance

This proposed AD would affect about 142 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Inspection for serial number (required by AD 2005–26–17).	1	$0	$80	$11,360.
Repetitive inspections (required by AD 2005–26–17).	3	0	$240, per inspection cycle.	$34,080, per inspection cycle.
New repetitive inspection program (new proposed action).	Between 8 and 12	0	Between $640 and $960, per inspection cycle.	Between $90,880 and $136,320, per inspection cycle.
Replacement (optional terminating/new proposed action).	48	90	$3,930	$558,060.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14438 (70 FR 77301, December 30, 2005) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2007–28159; Directorate Identifier 2006–NM–257–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 15, 2007.

Affected ADs

(b) This AD supersedes AD 2005–26–17.

Applicability

(c) This AD applies to Airbus Model A300–600 series airplanes and Model A310 series airplanes, certificated in any category, equipped with carbon fiber reinforced plastic (CFRP) elevator skin panels, modified in accordance with Airbus Service bulletin A310–55–2019 or A300–55–6016 (Airbus modification 10861) with graphite fiber reinforced plastic (GFRP)/Tedlar film as external protection, with part numbers (P/Ns) and serial numbers (S/Ns) identified in Airbus Service Bulletin A300–55–6039 or A310–55–2040, both dated June 7, 2006.

Unsafe Condition

(d) This AD results from reports of damage caused by moisture/water inside the elevator. We are issuing this AD to detect and correct debonding of the skins on the elevators, which could cause reduced structural integrity of an elevator and reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of the Requirements of AD 2005–26–17

Inspection for Serial Number, Repetitive Inspections, and Corrective Actions

(f) Within 600 flight hours after February 3, 2006 (the effective date of AD 2005–26–17), inspect to determine if the S/N of the elevator is listed in Airbus All Operators Telex (AOT) A300–600–55A6032, dated June 23, 2004, or Airbus Service Bulletin A300–55–6039, dated June 7, 2006 (for Model A300–600 series airplanes); or in Airbus AOT A310–55A2033, dated June 23, 2004, or Airbus Service Bulletin A310–55–2040, dated June 7, 2006 (for Model A310 series airplanes).

(1) If the S/N does not match any S/N on either AOT or service bulletin S/N list, no further action is required by this paragraph.

(2) If the S/N matches a S/N listed in an AOT or service bulletin, before further flight, do the actions listed in Table 1 of this AD, and any corrective action as applicable, in accordance with Airbus AOT A300–600–55A6032, dated June 23, 2004; or Airbus AOT A310–55A2033, dated June 23, 2004; as applicable. Repeat the inspections thereafter at intervals not to exceed 600 flight hours until the inspection required by paragraph (j) of this AD is accomplished. Do applicable corrective actions before further flight.

TABLE 1.—REPETITIVE INSPECTIONS

Do a—	Of the—	For any—
Detailed inspection	Elevator upper and lower external skin surfaces	Damage (i.e., breaks in the graphite fiber reinforced plastic (GFRP)/Tedlar film protection, debonded GFRP/Tedlar film protection, bulges, torn-out plies).
Visual inspection with a low-angle light.	Elevator upper and lower external skin surfaces	Differences in the surface reflection.
Tap-test inspection	Upper and lower external skin surfaces of the honeycomb core panels in the elevator.	Honeycomb core that has debonded from the carbon fiber reinforced plastic (CFRP).

Note 1: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Repair Approval

(g) Where the AOT specified in paragraph (f) of this AD says to contact the manufacturer for repair instructions, or an alternative inspection method: Before further flight, repair or do the alternative inspection method according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent), or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(h) As of February 3, 2006, no carbon fiber elevator having part number (P/N) A55276055000 (left-hand side) or P/N A55276056000 (right-hand side) may be installed on any airplane unless it is inspected according to paragraph (f) of this AD; or according to paragraph (j) of this AD.

No Reporting Required for AOT Inspections

(i) Although the AOTs referenced in paragraph (f) of this AD specify to submit inspection reports to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

Revised Inspection Program

(j) For airplanes with affected S/Ns identified in paragraph (f) of this AD: Except as provided by paragraph (k) of this AD, within 2,000 flight cycles or 18 months after the effective date of this AD, whichever occurs earlier, do a detailed inspection of the external surfaces of the GRFP/Tedlar film protection on the upper and lower skin panels to detect damage of the film, and a

thermographic inspection of the upper and lower skin panels to detect any potential water indication inside the panel's honeycomb core; do all applicable related investigative/corrective actions before further flight; and repair the external GFRP/Tedlar film with pore filler. Do all actions in accordance with the Accomplishment Instructions of Service Bulletin A300–55–6039 (for Model A300–600 series airplanes), or Service Bulletin A310–55–2040 (for Model A310 series airplanes); both including Appendix 01, both dated June 7, 2006. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles or 18 months, whichever occurs earlier. Where the service bulletin says to contact the manufacturer for repair instructions: Before further flight, repair or do the alternative inspection method according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the European Aviation Safety Agency (EASA) (or its delegated agent). Doing the inspections in accordance with this paragraph terminates the repetitive inspection requirements of paragraph (f) of this AD.

(k) The maximum time between the inspection required by paragraph (f) of this AD and the first inspection done in accordance with paragraph (j) of this AD must be no greater than: For the thermographic inspection, 2,500 flight hours after the last thermographic inspection done in accordance with the applicable AOT specified in paragraph (f) of this AD; and for the tap test, 600 flight hours after the last tap test inspection done in accordance with paragraph (f) of this AD.

Report

(l) Submit a report of the findings (both positive and negative) of the inspections required by paragraph (j) of this AD to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD. The report must include the information in Appendix 01 of Airbus Service Bulletin A300–55–6039, or Service Bulletin A310–55–2040, both dated June 7, 2006, as applicable. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Optional Terminating Action

(m) Replacing the external GFRP/Tedlar film with an application of pore filler on the whole elevator external surface in accordance with Airbus Service Bulletin A300–55–6040 (for Model A300–600 series airplanes), or Service Bulletin A310–55–2041 (for Model A310 series airplanes), both dated June 5, 2006, terminates the repetitive inspection requirements of paragraph (j) of this AD, provided the replacement is done before further flight after accomplishment of Service Bulletins A310–55–2040 and A300–55–6039, both dated June 7, 2006.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) Alternative methods of compliance, approved previously in accordance with AD 2005–26–17, are approved as alternative methods of compliance with the corresponding provisions of this AD.

Related Information

(o) EASA airworthiness directive 2006–0289, dated November 2, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on May 7, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9391 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28160; Directorate Identifier 2007–NM–006–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and 757–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200 and 757–300 series airplanes. This proposed AD would require installing a copper bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain masts. This proposed AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment on a Model 767–300F airplane. We are proposing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system due to a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

DATES: We must receive comments on this proposed AD by July 2, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dave Webber, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6451; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28160; Directorate Identifier 2007–NM–006–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD.

Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that, during an inspection of the forward cargo compartment on a Model 767–300F airplane, an operator found charred insulation blankets and burned wires around the forward gray water composite drain mast. Additional charring on the insulation blankets was noticed several feet away along the routing of the drain mast's ground wire and power wires. Analysis of the damaged parts revealed that a lightning strike on the composite drain mast caused the damage to the wires and insulation blankets. This condition, if not corrected, could cause disruption of electrical power and fire and heat damage to equipment in the event of a lightning strike on the composite drain mast, which could result in the loss of several functions essential for safe flight.

A design review of the gray water composite drain mast installation on Model 737NG, 757, 767, and 777 airplanes revealed that the installation of a heavier bonding jumper is necessary to provide adequate lightning protection to the gray water composite drain mast installation. The subject area on Model 757 airplanes is almost identical to that on the affected Model 767–300F airplane. Therefore, Model 757 airplanes may be subject to the unsafe condition revealed on the Model 767–300F airplane. We are currently considering additional rulemaking to address the identified unsafe condition on Model 737NG, 767, and 777 airplanes.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–30–0024, dated July 24, 2006. The service bulletin describes procedures for installing a 135-ampere copper bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain masts.

Above the waste-water access panel, the installation includes:

- Replacing the existing ground bracket with a new ground bracket;
- Installing a bonding jumper between the ground bracket and the clamp on the tube of the forward gray water composite drain mast;
- Doing a drain mast installation test; and
- Measuring the resistance of the bonding jumper installation.

In the bulk cargo compartment, the installation includes:

- Installing a new ground bracket;
- Installing a bonding jumper between the ground bracket and the clamp on the tube of the aft gray water composite drain mast;
- Doing a drain mast installation test; and
- Measuring the resistance of the bonding jumper installation.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 83 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Bonding jumper installation	2	$80	$353, per kit (1 kit per drain mast).	$866	59	$51,094

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–28160; Directorate Identifier 2007–NM–006–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200 and 757–300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–30–0024, dated July 24, 2006.

Unsafe Condition

(d) This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment on a Model 767–300F airplane. We are issuing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system due to a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Bonding Jumper Installation

(f) Within 60 months after the effective date of this AD: Install a 135-ampere copper bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain mast, in accordance with the Accomplishment instructions of Boeing Special Attention Service Bulletin 757–30–0024, dated July 24, 2006.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on May 7, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9390 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2007–27373](Formerly [USCG–2207–2737])

RIN 1625–AA08

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the docket number of the Notice of Proposed Rulemaking entitled ''Regattas and Marine Parades; Great Lakes Annual Marine Events'' published on April 6, 2007, in the **Federal Register** (72 FR 17062).

DATES: The NPRM is corrected as of May 16, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–27373 to the Docket Management Facility at the U.S. Department of Transportation. Two different locations are listed under the mail and delivery options below because the Document Management Facility is moving May 30, 2007. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:*

• Address mail to be delivered before May 30, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

• Address mail to be delivered on or after May 30, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(3) *Fax:* 202–493–2251.

(4) *Delivery:*

• Before May 30, 2007, deliver comments to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

• On or after May 30, 2007, deliver comments to: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

At either location, deliveries may be made between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Attorney-Advisor, Coast Guard, 2100 Second Street, SW., Washington, DC 20593 at 202–372–3864.

SUPPLEMENTARY INFORMATION: On April 6, 2007, the Coast Guard published a Notice of Proposed Rulemaking entitled ''Regattas and Marine Parades; Great Lakes Annual Marine Events'' **Federal Register** (72 FR 17062). In that document the last digit of the docket number USCG–2007–2737 was inadvertently shortened. The correct docket number for this NRPM is USCG–2007–27373.

In rule FR Doc. E7–6425 published on April 6, 2007, (72 FR 17062) make the following corrections:

1. On page 17062, in the first column, in the heading change the docket number to read as follows: ''[USCG–2007–27373]''

Dated: May 9, 2007.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E7–9349 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD55

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing this rule to manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. This proposed rule would require that recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound restrictions, that snowmobilers in Yellowstone be accompanied by a commercial guide, and proposes certain revisions to the daily entry limits on the numbers of snowmobiles and snowcoaches that may enter the parks. Traveling off designated oversnow routes will remain prohibited.

DATES: Comments must be received by July 16, 2007.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD55 (RIN), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190.
- *Hand Deliver to:* Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

All submissions received must include the agency name and RIN. For additional information see ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307–344–2019 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades. In 1997 the Fund for Animals and others filed suit, alleging violations of non-compliance with the National Environmental Policy Act (NEPA), among other laws. The suit resulted in a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the three park units. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (FEIS) was published for YNP, GTNP, and the Parkway. A Record of Decision (ROD) was signed by the Intermountain Regional Director on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminated both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provided access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time, and the snowmobile use analyzed in the FEIS alternatives, impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). That rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others in the Department of the Interior and the NPS were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association (ISMA) and several groups and individuals. The States of Wyoming and Montana subsequently intervened on behalf of the plaintiffs. Following promulgation of final regulations, the original complaint was amended to also challenge the regulations. The lawsuit asked for the decision, as reflected in the ROD, to be set aside. The lawsuit alleged among other things, a violation of NEPA. A procedural settlement was reached on June 29, 2001, under which, NPS agreed to prepare a Supplemental Environmental Impact Statement (SEIS) incorporating ''any significant new or additional information or data submitted with respect to a winter use plan.'' Additionally, the NPS provided the opportunity for additional public participation in furtherance of the purposes of NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The draft SEIS examined four additional alternatives: two alternatives to allow some form of snowmobile access to continue, a no-action alternative that would implement the November 2000 ROD, and another alternative that would implement the no-action alternative one year later to allow additional time for phasing in snowcoach-only travel. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included air quality and air quality related values, employee health and safety, natural soundscapes, public health and safety, socioeconomics, wildlife (bison and elk), and visitor experience. The SEIS did not re-evaluate the decision to ban snowplane use on Jackson Lake because this issue had not been raised in the lawsuit or its resulting settlement agreement and because the NPS did not have any reason to doubt the validity of its finding that snowplane use impaired park resources.

On November 18, 2002, the NPS published a final rule (67 FR 69473) (''delay rule'') based on the FEIS, which generally postponed implementation of the phase-out of snowmobiles in the parks for one year. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003–2004 and the complete prohibition on snowmobiles until 2004–2005. The 2001 regulation's transitional requirement that snowmobile parties use an NPS-permitted guide was also delayed until the 2003–2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, Yellowstone side road use and the ban on snowplane use remained effective for the winter use season of 2002–2003.

The Notice of Availability for the final SEIS was published on February 24, 2003 (68 FR 8618). The final SEIS included a new alternative, alternative 4, consisting of elements which fell within the scope of the analyses contained in the Draft SEIS and which were identified in the preferred alternative. In addition, the final SEIS included changes to the alternatives, changes in modeling assumptions and analysis, and incorporated additional new information. The Intermountain Regional Director signed a ROD for the SEIS, which became effective on March 25, 2003. The ROD selected final SEIS alternative 4 for implementation, and enumerated additional modifications to that alternative. The final SEIS and ROD found that implementation of final SEIS alternatives 1a, 1b, 3, or 4 would not likely impair park resources or values due to motorized oversnow recreation. On December 11, 2003, the new

regulation governing winter use in the parks was published.

On December 16, 2003, the U.S. District Court for the District of Columbia, ruling in *Fund for Animals* v. *Norton*, vacated and remanded the December 11, 2003, regulation and SEIS. The court effectively reinstated the January 22, 2001, regulation phasing out recreational snowmobiling pursuant to the delay rule. Specifically, up to 493 snowmobiles a day were to be allowed into Yellowstone for the 2003–2004 season, and another 50 in Grand Teton and the Parkway combined. All snowmobiles in Yellowstone were required to be led by a commercial guide. Snowmobiles were to be phased out entirely from the parks in the 2004–2005 season.

ISMA and the State of Wyoming reopened their December 2000 lawsuit against the Department of the Interior and the NPS. On February 10, 2004, the U.S. District Court for the District of Wyoming issued a preliminary injunction in *ISMA* v. *Norton* preventing the NPS from continuing to implement the snowmobile phase-out. The court also directed the superintendents of Yellowstone and Grand Teton to issue emergency orders that were ''fair and equitable'' to all parties to allow visitation to continue for the remainder of the winter season. Under the authority of 36 CFR 1.5, the superintendents authorized up to 780 snowmobiles a day into Yellowstone, and up to 140 into Grand Teton and the Parkway combined. In Yellowstone, the requirement that all snowmobilers travel with a commercial guide remained in effect.

Because it had no clear rules under which to manage the parks for the winter season of 2004–2005, the NPS prepared a Temporary Winter Use Plans Environmental Assessment in 2004. The temporary plan was intended to provide a framework for managing winter use in the parks for a period of three years, and was approved in November 2004 with a ''Finding of No Significant Impact'' (FONSI). An interim rule was published in the **Federal Register** implementing the temporary plan for the 2004–2005 winter season. Its provisions include a limit of 720 snowmobiles per day for Yellowstone and 140 snowmobiles for Grand Teton and the Parkway; a requirement that all recreational snowmobiles in Yellowstone must be accompanied by a commercial guide; and a requirement that all recreational snowmobiles operating in the parks must meet Best Available Technology (BAT) requirements for reducing noise and air pollution (with limited exceptions at Grand Teton and the Parkway).

The interim rule was effective through the winter season of 2006–2007, while the NPS is preparing a long-term winter use plan and EIS for the park. The proposed rule is issued in conjunction with the Winter Use Plans Draft Environmental Impact Statement (DEIS) Thus, without a rulemaking , the use of snowmobiles and snowcoaches would not be allowed after the 2006–2007 winter season.

Several litigants filed lawsuits challenging the temporary plan in both the District Court in Wyoming and the District Court in the District of Columbia. In October 2005, the Wyoming District Court upheld the validity of the 2004 temporary winter use rule in *The Wyoming Lodging and Restaurant Association* v. *U.S. Department of the Interior*. Litigation is still pending in the U.S. District Court for the District of Columbia and Wyoming, including a lawsuit filed in 2005 captioned *Save Our Snowplanes* v. *Norton.*

Congress has three times included language in appropriations legislation for the Department of the Interior requiring that the temporary winter use rules remain in effect for the winter seasons of 2004–2005, 2005–2006, and 2006–2007.

Park Resource Issues

The Draft Environmental Impact Statement (DEIS) supporting this proposed rule focuses on analyzing the environmental impacts of six alternatives for the management of winter use in the parks. The major issues analyzed in the DEIS include social and economic issues, human health and safety, wildlife, air quality, natural soundscape, visitor use and access, and visitor experience. The impacts associated with each of the alternatives are detailed in the DEIS and are available at the following site: *http://parkplanning.nps.gov*. Additional information is available online at: *http://www.nps.gov/yell/planyourvisit/winteruse.htm* and *http://www.nps.gov/grte*.

Impairment to Park Resources and Values

In addition to determining the environmental consequences of the alternatives, NPS policy requires analysis of potential effects to determine whether actions would impair park resources. In managing National Park System units, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. However, the NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

The FEIS ROD, dated November 22, 2000, concluded that, of the seven alternatives evaluated in the FEIS, only one (alternative G), which called for a phase-out of snowmobile use in the parks, did not impair park resources. This was the basis for selecting this alternative, as described in the rationale for the decision in the November 2000 ROD. In all other FEIS alternatives, the existing snowmobile use in Yellowstone was found to impair air quality, wildlife, the natural soundscape, and opportunities for the enjoyment of the park by visitors. In Grand Teton, impairment to the natural soundscape and opportunities for enjoyment of the park was found to result from the impacts of snowmobile and snowplane use. In the Parkway, impairment was found to result from snowmobile use on air quality, the natural soundscape, and opportunities for enjoyment of the park. It was determined that there was no way to mitigate the impairment short of reducing the amount of use as determined by an effective carrying capacity analysis, or by imposing a suitable limit unsupported by such an analysis.

The final rule implementing FEIS alternative G, published in the **Federal Register** on January 22, 2001, recognized that, ''achieving compliance with the applicable legal requirements while still allowing snowmobile use would require very strict limits on the numbers of both snowmobiles and snowcoaches.'' Thus, the January 2001 rule recognized that some snowmobile and snowcoach use could possibly be accommodated in the parks through appropriate management actions without resulting in impairment of park resources and values. The SEIS and March 25, 2003 ROD reinforced these conclusions.

On November 10, 2004, the NPS published a final rule in the **Federal Register** implementing Alternative 4 of the Temporary Winter Use Plans Environmental Assessment. Publication of the rule was preceded by a Finding of No Significant Impact in which the NPS determined that the winter use activities allowed in the parks under Alternative 4 would not result in the impairment of park resources or values. Under the temporary plan, winter use

activities are intensively managed in order to prevent the impairment of park resources and values. The plan employs strict requirements on snowmobiles and snowcoaches, along with a comprehensive monitoring program. Monitoring efforts include air quality, natural soundscapes, wildlife, employee health and safety, and visitor experience. Daily entry limits have been established that represent use levels slightly below the historic average numbers of snowmobiles entering Yellowstone, while eliminating the much higher peak use days experienced in the past. Limits on the numbers of snowmobiles have resulted in fewer conflicts with wildlife, fewer air and noise emissions, and improved road conditions. Limits on the numbers of snowmobiles also provide park managers with more predictable winter use patterns and an assurance that use cannot increase.

Under the temporary plan, all snowmobilers entering Yellowstone were accompanied by a commercial guide. This requirement reduced conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercial guides must also have control over their clientele, which greatly reduces unsafe and illegal snowmobile use. In this way, guides ensure that park regulations are enforced and provide a safer experience for visitors. The requirement that all snowmobilers travel with commercial guides also benefits natural soundscapes, since commercially guided parties tend to travel in relatively large groups, resulting in longer periods when snowmobile sound is not audible.

Finally, the temporary plan requires that all recreational snowmobiles entering the parks meet best available technology (BAT) requirements. This requirement, along with air emissions requirements for snowcoaches, ensures that the vast majority of recreational over-snow vehicles operating in the parks employ current emissions control equipment, and has resulted in improvements in air quality and natural soundscapes.

This proposed rule is based on Alternative 1 of the DEIS and in large part on the November 10, 2004 rule implementing the temporary winter use plan currently in effect. The NPS believes implementation of Alternative 1 and the proposed rule would not result in the impairment of park resources or values for the same reasons as described above.

This proposed rule is issued in conjunction with the Winter Use Plans Draft Environmental Impact Statement (DEIS) and will ensure that visitors to the parks have an appropriate range of winter recreational opportunities. In addition, the proposed rule will ensure that these recreational activities are in an appropriate setting and that they do not impair or irreparably harm park resources or values. The proposal provides a structure for winter use management in the parks and will replace an interim rule that has been in effect since the winter season of 2004–2005. The Rule is intended to continue providing certainty about winter use management in the parks that has existed for the last several years among the public and local communities.

Description of the Proposed Rule

The DEIS analyzes six alternatives with regard to winter use. These regulations propose to implement Alternative 1 from the DEIS. Alternative 1 and the proposed regulations are similar in most respects to the temporary winter use plan and the rules that guide its implementation. Thus, many of the regulations regarding operating conditions, designated routes, and restricted hours of operation have been in effect and enforced by the NPS for several years under the authority of 36 CFR part 7 or 36 CFR 1.5. Other aspects of the proposed rule are new, including new requirements to utilize Best Available Technology for snowcoaches, certain changes to the designated routes that are open to oversnow vehicle use, and adjustments to the daily entry limits.

The NPS has found that the interim regulations that have been in effect for the past three winter seasons have resulted in quieter conditions, clean air, fewer wildlife impacts, and much improved visitor safety and experiences. The NPS believes that these proposed regulations will continue to produce similar results.

Monitoring

Scientific studies and monitoring of winter visitor use and park resources (including air quality, natural soundscapes, wildlife, employee health and safety, water quality, and visitor experience) will continue. Selected areas of the parks, including sections of roads, will be closed to visitor use if these studies indicate that human presence or activities have a substantial adverse effect on wildlife or other park resources that cannot otherwise be mitigated. A one-year notice will be provided before any such closure would be implemented unless immediate closure is deemed necessary to avoid impairment of park resources. Most non-emergency changes in park management implemented under the adaptive management framework would be implemented only after at least one or two years of monitoring, followed by a 6- to 12-month implementation period. The superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

Best Available Technology Restrictions

To mitigate impacts to air quality and the natural soundscape, the NPS is proposing to continue the requirement that all recreational snowmobiles meet air and sound emission restrictions, hereafter referred to as Best Available Technology (BAT) restrictions, to operate in the parks, with limited exceptions. For air emissions restrictions, BAT means all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound restrictions, snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). The superintendent will maintain a list of approved snowmobile makes, models, and year of manufacture that meet BAT restrictions. For the winter of 2006–2007, the NPS certified 35 different snowmobile models (from various manufacturers; model years 2002–2007) as meeting the BAT requirements. The BAT certification is good for six years from the date on which a model is certified as meeting the BAT requirements.

To comply with the BAT air emission restrictions, the NPS proposes to continue the requirement that began with the 2005 model year, that all snowmobiles must be certified under 40 CFR 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide. Snowmobiles must be tested on a five-mode engine dynamometer, consistent with the test procedures specified by EPA (40 CFR 1051 and 1065). Other test methods could be approved by the NPS.

The NPS proposes to retain the use of the FEL method for demonstrating compliance with BAT requirements because it has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve our emissions requirements, unless modified or

damaged (under this proposed regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with BAT requirements and therefore not permitted to enter the parks). Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS BAT requirements because FEL data is already provided to EPA by the manufacturers. Further, the EPA has the authority to insure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, the NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that our emissions requirements are consistent with these labels and the use of FEL will avoid potential confusion for consumers.

To determine compliance with the BAT sound emission restrictions, snowmobiles must be tested using SAE J192 (revised 1985) test procedures. The NPS recognizes that the SAE updated these test procedures in 2003, however, the changes between the 2003 and 1985 test procedures could alter the measurement results. The BAT requirement was initially established using 1985 test procedures (in addition to information provided by industry and modeling). Therefore, to be consistent with our BAT requirements, we will continue to use the 1985 test. We also understand that an update to the 2003 J192 procedures may be underway. We are interested in transitioning to the newer J192 test procedures, and we will continue to evaluate this issue after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

The BAT requirement for sound was established by reviewing individual machine results from side-by-side testing performed by the NPS' contractor, Harris Miller Miller & Hanson Inc. (HMMH) and the State of Wyoming's contractor, Jackson Hole Scientific Investigations (JHSI). Six four-stroke snowmobiles were tested for sound emissions. These emission reports independently concluded that all the snowmobiles tested between 69.6 and 77.0 dB(A) using the J192 protocol. On average, the HMMH and JHSI studies measured four-strokes at 73.1 and 72.8 dB(A) at full throttle, respectively. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dB(A) over the sound limit to account for variations in weather, snow conditions, and other factors.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures maintains consistency with the testing conditions used to determine the BAT requirement. This reduced barometric pressure allowance is necessary since snowmobiles were tested at the high elevation of Yellowstone National Park, where atmospheric pressure is lower than the SAE J192's requirements due to the park's elevation. Testing data indicates that snowmobiles test quieter at high elevation, and therefore may be able to pass our BAT requirements at higher elevations but fail when tests are conducted near sea level.

NPS will annually publish a list of snowmobile makes, models, and year of manufacture that meet BAT restrictions. Snowmobile manufacturers may demonstrate that snowmobiles are compliant with the BAT air emissions requirements by submitting a copy of their application used to demonstrate compliance with EPA's general snowmobile regulation to the NPS (indicating FEL). We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as BAT, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify the snowmobile at a level that would no longer meet BAT requirements, this snowmobile would no longer be considered to be BAT compliant and would be phased-out according to a schedule determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers could submit their existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program. When certifying snowmobiles as BAT, NPS will announce how long the BAT certification applies. Generally, each snowmobile model would be approved for entry into the parks for six winter seasons after it was first listed. Based on NPS experience, six years represents the typical useful life of a snowmobile, and thus six years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant.

Individual snowmobiles modified in such a way as to increase sound and air emissions of HC and CO beyond the proposed emission restrictions would be denied entry to the parks. It would be the responsibility of the end users, and guides and outfitters to ensure that their oversnow vehicles, whether snowmobiles or snowcoaches, comply with all applicable restrictions. Emission and sound requirements for snowcoaches are described below. The requirement in Yellowstone that all snowmobilers travel with commercial guides will assist NPS in enforcing BAT requirements, since businesses providing commercial guiding services in the parks are responsible under their contracts with the park to ensure that their clients' use only BAT snowmobiles. In addition, these businesses are required to ensure that snowmobiles used in the park are not modified in such a way as to increase sound or air emissions, and that BAT snowmobiles are properly maintained.

All commercially guided recreational snowmobiles operating within YNP would be required to meet the BAT restrictions. Snowmobiles being operated on the Cave Falls road, which extends approximately one mile into the park from the adjacent national forest, would be exempt from BAT requirements. In GTNP and the Parkway, all recreational snowmobiles operating on the Continental Divide Snowmobile Trail (CDST), Jackson Lake, and the Grassy Lake Road must meet the BAT restrictions, with two exceptions. The first exception is for snowmobiles operating on the portion of the CDST between the east boundary of GTNP and

Moran Junction. Because this portion of the CDST passes in and out of the park boundary and is generally adjacent to other public and private lands where snowmobile use is permitted, this section is being managed similarly to other routes where non-BAT snowmobile use is allowed in order to provide access to adjacent public and private lands. The second exception is for the Grassy Lake Road, where snowmobiles originating in the Targhee National Forest would be allowed to travel eastbound to Flagg Ranch and return westbound without meeting the BAT requirement; however, these snowmobiles could not travel further into the Parkway than Flagg Ranch. The NPS is allowing this exception in order to ensure that visitors to the remote Grassy Lake area of the Targhee National Forest are able to access food, fuel, emergency services, and other amenities available at Flagg Ranch. Any commercially guided snowmobiles authorized to operate in the Parkway or Grand Teton will be required to meet BAT restrictions.

The University of Denver conducted winter emissions measurements in YNP that involved the collection of emissions data from in-use snowcoaches and snowmobiles in February 2005 and February 2006. Results from that work indicate that while most snowcoaches have lower emissions per person than two-stroke snowmobiles, the snowcoach fleet could be modernized to reduce carbon monoxide (CO) and hydrocarbon (HC) emissions. This work also supports snowmobile BAT and the development of snowcoach air emission requirements.

Under concessions contracts issued in 2003, 78 snowcoaches are currently authorized to operate in Yellowstone. Approximately 29 of these snowcoaches were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured before 1983 and are referred to as ''historic snowcoaches'' for the purpose of this rulemaking. All other snowcoaches are passenger vans or light buses that have been converted for oversnow travel using tracks and/or skis. During the winter of 2005–2006, an average of 29 snowcoaches entered Yellowstone each day.

In comparison with four-stroke snowmobiles, snowcoaches operating within EPA's Tier 1 standards are cleaner, especially given their ability to carry up to seven times more passengers (Lela and White 2002). In 2004, EPA began phasing-in Tier 2 emissions standards for multi-passenger vans, and they will be fully phased-in by 2009. Tier 2 standards will require that vehicles be even cleaner than Tier 1. Tier 2 standards would also significantly reduce the open loop mode of operation.

Beginning in the 2011–2012 season, all snowcoaches must meet air emission requirements, which will be the functional equivalent of having EPA Tier I emissions control equipment incorporated into the engine and drive train for the vehicle class (size and weight) as a wheeled vehicle. The NPS will encourage, through contract and permit, snowcoaches to have EPA Tier II emissions control equipment for the vehicle class. In addition, all critical emission and sound-related exhaust components that were originally installed by the manufacturer must be in place and functioning properly. Malfunctioning components must be replaced with original equipment manufacturer (OEM) components where possible. If OEM parts are not available, aftermarket parts may be used if they are certified not to worsen emission and sound characteristics from OEM levels. In general, catalysts that have exceeded their typical useful life as stated by the manufacturer must be replaced unless the operator can demonstrate the catalyst is functioning properly.

Beginning in the 2011–2012 season, snowcoaches must meet a sound emissions requirement of no greater than 73dBA; test procedures to be determined by the NPS.

The restrictions on air and sound emissions proposed in this rule are not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the parks. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to ''promote and regulate'' the use of national parks ''by such means and measures as conform to the fundamental purpose of said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Further, the Secretary is expressly authorized by 16 U.S.C. 3 to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks. * * *'' This exercise of the NPS Organic Act authority is not an effort by NPS to regulate manufacturers and is consistent with Sec. 310 of the Clean Air Act.

Since 2001, Yellowstone and Grand Teton National Parks have been converting their own administrative fleet of snowmobiles to four-stroke machines. These machines have proven successful in use throughout the parks. NPS now uses these snowmobiles for most administrative uses. However, NPS recognizes that some administrative applications, such as off-trail boundary patrols in deep powder, towing heavy equipment or disabled sleds, search and rescue, or law enforcement uses may require additional power beyond that supplied by currently available snowmobiles that meet the BAT restrictions. In these limited cases, NPS may use snowmobiles that do not meet BAT restrictions proposed in this rule.

Use of Commercial Guides

To mitigate impacts to natural soundscapes and wildlife, and for visitor and employee safety, all recreational snowmobiles operated in YNP must be accompanied by a commercial guide, except for those being operated on the one-mile segment of the Cave Falls road that extends into the park from the adjacent national forest. This guiding requirement will reduce conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercially guided parties also tend to be larger in size, which reduces the overall number of encounters with wildlife and reduces the amount of time over-snow vehicles are audible. Commercial guides are educated in safety and are knowledgeable about park rules. Commercial guides are required to exercise reasonable control over their clientele, which has proven to greatly reduce unsafe and illegal snowmobile use. Commercial guides with contractual obligations to the NPS also allows for more effective enforcement of park rules by the NPS. These guides receive rigorous multi-day training, perform guiding duties as employees of a business, and are experts at interpreting the resources of the parks to their clients. Commercial guides are employed by local businesses; those jobs are not performed by NPS employees.

Commercial guides use a ''follow-the-leader'' approach, stopping often to talk with the group. They lead snowmobiles single-file through the park, using hand signals to pass information down the line from one snowmobile to the next, which has proven to be effective. Signals are used to warn group members about wildlife and other road hazards, indicate turns, and when to turn on or off the snowmobile. Further, all commercial guides are trained in basic first aid and CPR. In addition to first aid kits, they often carry satellite or cellular

telephones, radios, and other equipment for emergency use. In this way, guides will ensure that park regulations are enforced and will provide a safer experience for visitors.

Since the winter of 2003–2004, all snowmobilers in Yellowstone have been led by commercial guides, resulting in significant positive effects on visitor health and safety. Guides are effective at enforcing proper touring behavior, such as adherence to speed limits, staying on the groomed road surfaces, and other snowmobiling behaviors that are appropriate to safely and responsibly visit the park. Since implementation of the guiding program there have been pronounced reductions in the number of law enforcement incidents and accidents associated with the use of snowmobiles, even when accounting for the reduced number of snowmobilers relative to historic use levels. The use of guides has also had beneficial effects on wildlife since guides are trained to respond appropriately when encountering wildlife.

No more than eight snowmobiles would be permitted in a group with one commercial guide; no more than 17 snowmobiles would be permitted in a group with two commercial guides on separate snowmobiles. Group numbers include the guide's machine. Individual snowmobiles may not be operated separately from a group within the park. The maximum group sizes of eight and 17 were established so that no one party would be so large that a single guide, or in the case of a larger group two guides, could not safely direct and manage all party members. No minimum group size requirement is necessary since commercially guided parties always have at least two snowmobiles—that of the guide and the customer.

Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. This will ensure that guided parties do not become separated. One-third mile will allow for sufficient and safe spacing between individual snowmobiles within the guided party, allow the guide(s) to maintain control over the group and minimize the impacts on wildlife and natural soundscapes.

In the Parkway, all snowmobile parties traveling north from Flagg Ranch must be accompanied by a commercial guide. Otherwise, snowmobilers in Grand Teton and the Parkway do not have to be accompanied by a guide. The use of guides in Grand Teton and the Parkway is generally not required due to the low volume of use, the conditions for access to Jackson Lake for winter fishing, the nature of the CDST, as well as the inter-agency jurisdiction on the Grassy Lake Road.

Designated Routes

In Yellowstone, a number of changes are proposed in routes designated for snowmobile use based on analyses in the Draft EIS and experience with the temporary plan over the past three winters. Certain additional side roads will be open for snowmobile use in the afternoons, based on the successful experience of NPS with this time of day use on Firehole Canyon Drive. Virginia Cascades would be accessible only via ski and snowshoe, returning it to an earlier type of non-motorized use. As of the 2008–2009 winter season, the East Entrance road would be closed to through travel by oversnow vehicles in order to address the avalanche risk at Sylvan Pass that cannot be reasonably mitigated. The one-year delay in implementing the change on the East Entrance road is proposed in response to comments received from cooperating agencies who expressed concern for communities and businesses to make appropriate adjustments. Reallocation of snowmobile numbers to reflect the change at the East Entrance would also be delayed until 2008–2009.

Daily Snowmobile Limits

The number of snowmobiles and snowcoaches that could operate in the parks each day would be limited under this rule. These limits are intended to mitigate impacts to air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience. The daily entry limits for snowmobiles and snowcoaches in Yellowstone are identified in Table 1, and for Grand Teton and the Parkway in Table 2. Use limits identified in Table 1 include guides since commercial guides are counted towards the daily limits. For Yellowstone, the daily limits are identified for each entrance and location; for Grand Teton and the Parkway, the daily limits apply to total snowmobile use on the road segment and on Jackson Lake.

Limits are specifically identified for Old Faithful in this proposed rule since a park concessioner provides snowmobile rentals and commercial guiding services originating there. The limits for the North Entrance and Old Faithful allow additional flexibility in offering visitors the opportunity to experience the park. For example, some visitors choose to enter the park on a snowcoach tour, spend two or more nights at the Old Faithful Snow Lodge, and go on a commercially guided snowmobile tour of the park during their stay at Old Faithful.

TABLE 1.—YELLOWSTONE DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Entrance*	Commercially guided snowmobiles	Commercially guided snowcoaches
West Entrance	424	34
South Entrance**	256	13
East Entrance	0	***0
North Entrance	20	13
Old Faithful	20	[1] 18
Cave Falls	****50	0

*For the winter of 2007–2008 only, the following allocations would be in effect: West Entrance, 400; South Entrance, 220; East Entrance, 40; North Entrance, 30; and Old Faithful, 30.

**Includes portion of the Parkway between Flagg Ranch and South Entrance.

***Does not include a limited number of snowcoaches that would be allowed to provide skier shuttles between East Entrance and Sylvan Pass.

****This use occurs on a short (approximately 1-mile segment) of road and is incidental to other snowmobiling activities in the Targhee National Forest. These users do not have to be accompanied by a guide.

[1] Parkwide.

TABLE 2.—GRAND TETON AND THE PARKWAY DAILY SNOWMOBILE ENTRY LIMITS

Entrance	Snowmobiles
CDST*	50
Grassy Lake Road (Flagg-Ashton Road)	50
Jackson Lake	40

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this trail in both parks.

The purpose of these daily entry limits is to impose strict limits on the numbers of snowmobiles and snowcoaches that may use the parks in order to minimize resulting impacts. Compared to historical use where peak days found as many as 1,700 snowmobiles in the parks, these limits represent a considerable reduction in peak day use, and are slightly less than the historic seasonal daily average of Yellowstone entries. These limits would reduce snowmobile usage well below historic levels that were of particular concern in the 2000 ROD.

The daily snowmobile and snowcoach limits are based on the analysis contained in the DEIS, which concluded that these limits, combined with other elements of this rule, would prevent unacceptable impacts thus preventing impairment to park resources and values while allowing for an appropriate range of experiences available to park visitors.

Section-by-Section Analysis

Section 7.13(l)(2) What terms do I need to know?

The NPS has included definitions for a variety of terms, including oversnow vehicle, designated oversnow route, and commercial guides. These definitions are also applicable to Grand Teton and the Parkway, § 7.22(g)(2) and § 7.21(a)(2), respectively. For snowmobiles, NPS is continuing to use the definition found at 36 CFR 1.4, and sees no need to alter that definition at this time. Earlier regulations specific to Yellowstone, Grand Teton and the Parkway referenced ''unplowed roadways'' but that terminology was changed to ''designated oversnow routes'' to more accurately portray the condition of the route being used for oversnow travel. These routes remain entirely on roads or water surfaces used by motor vehicles and motorboats during other seasons and thus are consistent with the requirements in § 2.18 . Earlier regulations also referred only to snowmobiles or snowcoaches. Since there is a strong likelihood that new forms of machines will be developed in the future that can travel on snow, a definition for ''oversnow vehicle'' was developed to ensure that such new technology is subject to this regulation. When a particular requirement or restriction only applies to a certain type of machine (for example, some concession restrictions only apply to snowcoaches) then the specific machine is stated and only applies to that type of vehicle, not all oversnow vehicles. However, oversnow vehicles that do not meet the strict definition of a snowcoach (i.e., both weight and passenger capacity) would be subject to the same requirements as snowmobiles. The definitions listed under § 7.13(l)(2) will apply to all three parks. These definitions may be clarified in future rulemakings based on changes in technology.

Section 7.13(l)(3) May I operate a snowmobile in Yellowstone National Park?

The authority to operate a snowmobile within Yellowstone, subject to use limits, guiding requirements, operating hours and dates, equipment requirements, and operations established elsewhere in this section, is provided in § 7.13(l)(3). Similarly, it is provided for Grand Teton in § 7.22(g)(3) and for the Parkway in § 7.21(a)(3). Limitations in the 2004 rule that terminated the authority to operate snowmobiles (and snowcoaches) in the Parks following the winter season of 2006–2007 have been removed.

Section 7.13(l)(4) May I operate a snowcoach in Yellowstone National Park?

This paragraph continues the authority to operate snowcoaches in Yellowstone, but requires that they be commercially operated under a concessions contract. Similarly, the authority to operate snowcoaches in the Parkway is provided in § 7.21(a)(4). For Grand Teton, § 7.22(g)(4) continues the current prohibition on the operation of snowcoaches.

The NPS proposes to establish entry requirements for snowcoaches relating to both air emissions and noise. Initially, the NPS would continue to require non-historic snowcoaches to meet the applicable EPA emission standards for the vehicle at the time it was manufactured. Beginning with the 2011–2012 season, all snowcoaches, both historic and non-historic, would be required to meet the functional equivalent of having EPA Tier 1 emissions control equipment incorporated into the engine and drive train for the vehicle class (size and weight) as a wheeled vehicle. Also beginning with the 2011–2012 season, all snowcoaches would be required to meet a sound emissions requirement of no greater than 73 dBA.

Section 7.13(l)(5) Must I operate a certain model of snowmobile?

This paragraph continues the requirement that only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in Yellowstone. Similarly, this requirement is described for Grand Teton and the Parkway in § 7.22(g)(5) and § 7.21(a)(5), respectively.

Section 7.13(l)(6) How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?

The NPS is not proposing any changes to the hydrocarbon and carbon monoxide emissions requirements for snowmobiles operating in the park. Snowmobiles must be certified under 40 CFR part 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW–hr for hydrocarbons and an FEL no greater than 120 g/kW–hr for carbon monoxide. Changes are not proposed to the current requirement that snowmobiles must operate at or below 73 dBA.

For Grand Teton and the Parkway, the same requirements are contained in § 7.22(g)(6) and § 7.21(a)(6), respectively.

Section 7.13 (l)(7) Where may I operate my snowmobile in Yellowstone National Park?

See also § 7.22 (g)(7) and § 7.21 (a)(7) for Grand Teton and the Parkway. Specific routes are listed where snowmobiles may be operated, but this proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including, for example, the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns, and in the interest of public safety and protection of park resources.

The proposed rule would designate that portion of the East Entrance Road in Yellowstone between Fishing Bridge Junction and Lake Butte Overlook as open for use by snowmobiles and snowcoaches. The remaining portion of the road, however, between the East Entrance and Lake Butte Overlook would not be open to oversnow vehicle

use, except for the 6-mile section between the East Entrance and Sylvan Pass which would remain open to snowcoaches only. The NPS proposes this change in recognition of the significant avalanche hazards that exist at Sylvan Pass that cannot be safely or cost effectively mitigated.

Snowmobiles authorized to operate on the frozen surface of Jackson Lake may gain access to the lake by trailering their snowmobiles to the parking areas near the designated access points via the plowed roadway. There is no direct access from the Continental Divide Snowmobile Trail to Jackson Lake, and use limits established for each area are entirely separate.

Section 7.13(l)(8) What routes are designated for snowcoach use?

See also § 7.21(a)(8) for the Parkway. In addition to the specific routes open to snowmobile use, snowcoaches may be operated on several other specific routes in Yellowstone. This proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns, and in the interest of public safety and protection of park resources.

The NPS proposes to designate that portion of the East Entrance Road in Yellowstone between Fishing Bridge Junction and Lake Butte Overlook as open for use by both snowmobiles and snowcoaches. The remaining portion of the road, however, between the East Entrance and Lake Butte Overlook would not be open to oversnow vehicle use, except for the 6-mile section between the East Entrance and Sylvan Pass which would remain open to snowcoaches only. The NPS proposes this change in recognition of the significant avalanche hazards that exist at Sylvan Pass that cannot be safely or cost effectively mitigated. The segment of road between the East Entrance and Sylvan Pass is a popular destination for cross country skiers, although there is a significant gain in elevation between the two points. By designating that portion of the road as open to snowcoaches, a skier shuttle could be provided, thereby enhancing opportunities for skiing without exposing snowcoaches and their passengers to the hazards of crossing the pass itself. This change would not occur until the winter of 2008–2009.

Section 7.13(l)(9) Must I travel with a commercial guide while snowmobiling in Yellowstone?

See also § 7.22(g)(8) and § 7.21(a)(9) for Grand Teton and the Parkway. The NPS is proposing to retain the requirement that all recreational snowmobile operators in Yellowstone be accompanied by a commercial guide. Similar to the previous rule, parties must travel in groups of no more than eight snowmobiles including that of the guide, however, the NPS is proposing to allow groups of up to 17 snowmobiles if two guides are present on separate snowmobiles.

No changes are being proposed regarding guiding requirements for Grand Teton and the Parkway, where guides are not currently required except in the Parkway on the route between Flagg Ranch and the South Entrance of Yellowstone.

Section 7.13(l)(10) Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the park each day?

The NPS is not proposing to change the total of 720 snowmobiles per day allowed to enter Yellowstone, or the total of 140 per day that are allowed in Grand Teton (see § 7.22(g)(9)) and the Parkway (see § 7.21(a)(10)). The specific daily entry limits for each of Yellowstone's entrances, however, have been adjusted somewhat, primarily to reallocate the 40 snowmobiles per day beginning in 2008–2009 that were previously allocated to the East Entrance, but which would not be allowed under this proposed rule.

The NPS is also proposing to establish a daily entry limit of 78 snowcoaches for Yellowstone. Although a regulatory limit is new this conforms to the existing number authorized in concession contracts and reflects consideration of the analyses of impacts in the DEIS.

Section 7.13(l)(11) When may I operate my snowmobile or snowcoach?

See also § 7.22(g)(10) and § 7.21(a)(11) for Grand Teton and the Parkway. The NPS is not proposing any changes to the methods that the Superintendent would use to determine operating hours and dates.

Section 7.13 (l)(12) What other conditions apply to the operation of oversnow vehicles?

This section includes a variety of requirements regarding the operation of snowmobiles in the parks, such as drivers' license and registration requirements, operating procedures, requirements for headlights, brakes and other safety equipment, length of idling time, towing of sleds, and other requirements related to safety and resource impact considerations. No changes are being proposed in this section from the previous regulations. See also § 7.22(g)(11) for Grand Teton and § 7.21(a)(12) for the Parkway.

Section 7.13 (l)(13) What conditions apply to alcohol use while operating an oversnow vehicle?

The NPS is proposing no changes to the conditions applicable to the use of alcohol while operating oversnow vehicles. Although the regulations in 36 CFR 4.23 apply to oversnow vehicles, a provision was included in the 2004 regulations to address the issue of under-age drinking while operating a snowmobile, and snowcoach operators or snowmobile guides operating under the influence while performing services for others. Many states have adopted similar alcohol standards for under-age operators and commercial drivers and the NPS feels it is necessary to specifically include these regulations to help mitigate potential safety concerns.

The alcohol level for minors (anyone under the age of 21) is set at .02. Although the NPS endorses ''zero tolerance'', a very low Blood Alcohol Content (BAC) is established to avoid a chance of a false reading. Mothers Against Drunk Driving and other organizations have endorsed such a general enforcement posture and the NPS agrees that under-age drinking and driving, particularly in a harsh winter environment, will not be allowed.

In the case of snowcoach operators or snowmobile guides, a low BAC limit is also necessary. Persons operating a snowcoach are likely to be carrying 8 or more passengers in a vehicle with tracks or skis that is more challenging to operate than a wheeled vehicle, and on oversnow routes that could pose significant hazards should the driver not be paying close attention or have impaired judgment. Similarly, persons guiding others on a snowmobile have put themselves in a position of responsibility for the safety of other visitors and for minimizing impacts to park wildlife and other resources. Should the guide's judgment be impaired, hazards such as wildlife on the road or snow obscured features, could endanger all members of the group in an unforgiving climate. For these reasons, the NPS is continuing to require that all guides be held to a stricter than normal standard for alcohol consumption. Therefore, the NPS has established a BAC limit of .04 for snowcoach operators and snowmobile

guides. This is consistent with federal and state rules pertaining to BAC thresholds for someone with a commercial drivers license.

The same conditions apply within Grand Teton and the Parkway; see § 7.22(g)(12) and § 7.21(a)(13), respectively.

Section 7.13 (l)(14) Do other NPS regulations apply to the use of oversnow vehicles?

See also § 7.22(g)(13) and § 7.22(a)(14) for Grand Teton and the Parkway, respectively. The NPS is not proposing any changes to the applicability of other NPS regulations concerning oversnow vehicle use.

Relevant portions of 36 CFR 2.18, including § 2.18(c), have been incorporated within these proposed regulations. Some portions of 36 CFR 2.18 and 2.19 are superseded by these proposed regulations, which allows these proposed regulations to govern maximum operating decibels, operating hours, and operator age (this is applicable to these park units only). In addition, 36 CFR 2.18(b) would not apply in Yellowstone, while it would apply in Grand Teton and the Parkway. This is due to the existing concurrent jurisdiction in Grand Teton and the Parkway. These two units are solely within the boundaries of the State of Wyoming and national park rangers work concurrently with state and county officers enforcing the laws of the State of Wyoming. The proposed rule also supersedes 36 CFR 2.19(b) in that it prohibits the towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile, except in emergency situations. Towing people, especially children, is a potential safety hazard and health risk due to road conditions, traffic volumes, and direct exposure to snowmobile emissions. This rule does not affect supply sleds attached by a rigid device or hitch pulled directly behind snowmobiles or other oversnow vehicles as long as no person or animal is hauled on them. Other provisions of 36 CFR Parts 1 and 2 continue to apply to the operation of oversnow vehicles unless specifically excluded here.

Section 7.13 (l)(15) Are there any forms of non-motorized oversnow transportation allowed in the park?

See also § 7.22(g)(14) and § 7.21(a)(15) for Grand Teton and the Parkway, respectively. Non-motorized travel consisting of skiing, skating, snowshoeing, and walking are generally permitted. Yellowstone and Grand Teton have specifically prohibited dog sledding and ski-joring (the practice of a skier being pulled by dogs or a vehicle) to prevent disturbance or harassment to wildlife. These restrictions have been in place for several years and would be reaffirmed under these regulations.

Section 7.13 (l)(16) May I operate a snowplane in Yellowstone National Park?

See also § 7.22(g)(15) and § 7.21(a)(16) for Grand Teton and the Parkway. Before the winter of 2002–2003, snowplanes were allowed on Jackson Lake within GTNP under a permit system. Based on the analysis set forth in the 2000 EIS and ROD and incorporated by reference into three subsequent rulemaking processes including the DEIS, the NPS found that the use of snowplanes results in impairment of the natural soundscape and opportunities for enjoyment of the park by visitors in violation of the NPS Organic Act. Additionally, with their unguarded propellers and high travel speeds, snowplanes present unacceptable safety risks. Accordingly, snowplanes have been banned since 2001. To date, NPS is not aware of any new or additional information regarding snowplanes that would suggest their use would not impair park resources and values. As a result, and to avoid any uncertainty based on their previous use on Jackson Lake, this proposed rule includes language that specifically continues the prohibition of snowplanes in each of these parks.

Section 7.13 (l)(17) Is violating any of the provisions of this section prohibited?

Some magistrates have interpreted the lack of a specific prohibitory statement in regulations to be ambiguous and therefore unenforceable. Although it would seem to be implicit that each instance of a failure to abide by specific requirements is a separate violation, the proposed regulation contains clarifying language for this purpose. Each occurrence of non-compliance with these regulations is a separate violation. However, it should also be noted that the individual regulatory provisions (i.e., each of the separately numbered subparagraphs throughout these three sections) could be violated individually and are of varying severity. Thus, each subparagraph violated can and should receive an individual fine in accordance with the issuance of the park's bail schedule as issued by the appropriate magistrate. It is not intended that violations of multiple subparagraphs of these regulations be treated as a single violation or subject only to a single fine. See also § 7.22(g)(20) and § 7.21(a)(17) for Grand Teton and the Parkway.

Section 7.22(g)(16) May I continue to access public lands via snowmobile through the park?

The NPS is proposing to continue providing access to public lands that are adjacent to Grand Teton National Park, consistent with the requirements found in the park's enabling legislation. Specific routes are designated to provide such access; the requirements established for air and sound emissions, guiding and licensing, snowmobile operator age, and daily entry limits do not apply on these routes. Section 7.22(g)(17) specifies that the routes designated in § 7.22(g)(16) may be used only to gain direct access to public lands located adjacent to the park boundary.

Section 7.22(g)(18) May I continue to access private property within or adjacent to the park via snowmobile?

The NPS is proposing to continue providing access to inholdings or private lands adjacent to Grand Teton National Park, consistent with the requirements found in the park's enabling legislation. Specific routes are designated to provide access, and the requirements established for air and sound emissions, guiding and licensing, snowmobile operator age, and daily entry limits do not apply on these routes. Section 7.22(g)(19) specifies that the routes designated in § 7.22(g)(18) may be used only to gain direct access to private lands located within or adjacent to the park boundary, and is authorized only for the landowners and their representatives or guests.

Summary of Economic Analysis

Introduction

This analysis examines six alternatives for winter use plans in the Greater Yellowstone Area (Yellowstone National Park, Grand Teton National Park, and John D. Rockefeller, Jr., Memorial Parkway). Alternative 1 is the preferred alternative. It would allow nearly historic levels of snowmobile use, but require the use of commercial guides. Alternative 1 mimics the current temporary winter use plan with three primary changes: (1) Air emission and sound standards for snowcoaches, (2) daily limits for snowcoaches, and (3) the closure of Sylvan Pass to through travel. Alternative 2 would emphasize snowcoach access and prohibit recreational snowmobiling. Road grooming would continue under Alternative 2, but Sylvan Pass would be closed to through travel beginning in the 2008–2009 winter season. Alternative 3a would prohibit road grooming or

packing on most road segments in Yellowstone National Park. Under that alternative, the road from the South Entrance to Old Faithful would be the only oversnow motorized access route in Yellowstone National Park. Alternative 4 would allow increased snowmobile use relative to historic levels. While some non-commercially guided or unguided snowmobile access would be allowed under Alternative 4, commercial guides would be required for most snowmobilers. Alternative 5 would balance snowmobile and snowcoach access and accommodate some unguided snowmobile access. That alternative also features a seasonal limit with flexible daily limits. Finally, Alternative 6 would emphasize plowing mid-elevation, west-side roads in Yellowstone National Park to allow wheeled commercial vehicle access. Alternative 6 would continue to allow oversnow vehicle access through the South Entrance and on the east side of the park, but Sylvan Pass would be closed to through travel beginning in the 2008–2009 winter season.

This analysis estimates the benefits and costs associated with the six alternatives relative to the baseline, which is Alternative 3b. Baseline describes the conditions that would occur if the proposed regulations that are currently under consideration were not implemented. Under those baseline conditions, recreational oversnow vehicle access would cease in all three parks. The estimated benefits and costs summarized here are incremental to the baseline. That is, these estimates are calculated as the additional benefits and costs the public would experience under each of the action alternatives as compared to the baseline conditions described by Alternative 3b.

The purpose for estimating these benefits and costs is to examine the extent to which each action alternative addresses the need for the proposed regulations. These regulations are needed to correct certain ''market failures'' associated with winter use in the parks. A market failure occurs when park resources and uses are not allocated in an economically efficient manner. For winter use in the parks, market failures occur as a result of ''externalities.'' An externality exists when the actions of some individuals impose uncompensated impacts on others. For example, snowmobile users impose costs on other park visitors in the form of noise, air pollution, congestion, and health and safety risks. Because these costs are not compensated, snowmobile users have little or no incentive to adjust their behavior accordingly. The proposed regulations are needed to correct this situation.

The quantitative results of this analysis are summarized below. It is important to note that this analysis could not account for all benefits or costs due to limitations in available data. For example, the costs associated with adverse impacts to park resources such as wildlife, and with law enforcement incidents are not reflected in the quantified net benefits presented in this summary. It is also important to note that this analysis addresses the economic efficiency implications of the different action alternatives and not their distributive equity (i.e., it does not identify the sectors or groups on which the majority of impacts fall). Therefore, additional explanation is required when interpreting the quantitative results of this analysis. An explanation of the selection of the preferred alternative is presented following the summary of quantified benefits and costs.

Quantified Benefits and Costs

The analysis of benefits and costs critically depends on estimates of visitation for the different user groups. While significant information is available from past visitation records and visitor surveys, a degree of uncertainty exists about how these visitation levels might change in the future under the six action alternatives. In past analyses of winter use plans, this uncertainty was addressed by making bounding assumptions to place upper and lower limits on a reasonable range of visitation. In the present analysis, a more sophisticated approach was used to better characterize uncertainty and to estimate expected levels of visitation. That approach involves specifying probability distributions of key visitation parameters, and then sampling from those distributions in order to estimate visitation levels. By taking multiple samples, measures of central tendency for visitation can be calculated that reflect the uncertainty in the available data. This analysis used 1,000 samples, which were adequate to calculate expected levels of visitation. Those expected visitation levels were then used to estimate the benefits and costs described below for the six action alternatives.

Alternative 6 has the highest level of quantified net benefits (benefits minus costs). That is because this alternative would result in the largest increase in overall visitation due to its emphasis on road plowing. That increased visitation would primarily benefit visitors that access the parks by wheeled vehicles such as buses, and the businesses that serve them, including restaurants, gas stations, and hotels. Additionally, due to the relative low snowmobile limits associated with Alternative 6, the costs imposed on non-snowmobile users are low.

Alternative 2 has the second highest level of quantified net benefits. This alternative would result in the largest increase of snowcoach visitation due to its emphasis on that mode of access. Additionally, Alternative 2 would yield the largest increase in skiing and snowshoeing visitation primarily as a result of the prohibition of recreational snowmobile use. While the other alternatives would allow some snowmobile use, the benefits from that use are diminished relative to the other modes of access allowed under Alternative 2 due to commercial guiding requirements.

Alternatives 3a, 4, and 5 have the smallest levels of quantified net benefits. Alternative 3a would eliminate most motorized access, which would obviously reduce the benefits associated with that mode of access. While alternatives 4 and 5 would have the largest increases in snowmobile visitation, the benefits of that access are diminished relative to other modes of access due to commercial guiding requirements. Additionally, the increased snowmobile visitation associated with Alternatives 4 and 5 would diminish the benefits of other visitors through crowding. Finally, while not quantified in this analysis, non-snowmobile visitors might prefer that snowmobiles be guided. That preference would further diminish the net benefits of Alternatives 4 and 5 to the extent that they allow unguided snowmobile access.

Alternative 1, the preferred alternative, has the third highest level of quantified net benefits. That level of net benefits generally reflects moderate benefits for visitors and businesses associated with snowmobile and snowcoach access, and moderate costs for other visitors such as skiers and snowshoers. The exception is for visitors arriving by bus, which would receive no benefits or costs under this alternative.

These net benefit levels are presented in Tables 1 and 2 below. Table 1 presents the total present value of quantified net benefits over the ten-year analysis period for winter seasons 2007–2008 through 2016–2017. Table 2 presents quantified net benefits per year for the same analysis period.

Double check upon accepting changes that the following tables are still correct (as rounded).

TABLE 1.—TOTAL PRESENT VALUE OF QUANTIFIED NET BENEFITS RELATIVE TO THE ALTERNATIVE 3B BASELINE, GREATER YELLOWSTONE AREA, 2007–2008 THROUGH 2016–2017

	Total present value of quantified net benefits
Alternative 1	
Discounted at 3%[a]	$55,270,000
Discounted at 7%[a]	45,190,000
Alternative 2	
Discounted at 3%[a]	122,900,000
Discounted at 7%[a]	100,900,000
Alternative 3a	
Discounted at 3%[a]	44,850,000
Discounted at 7%[a]	36,760,000
Alternative 4	
Discounted at 3%[a]	32,690,000
Discounted at 7%[a]	26,770,000
Alternative 5	
Discounted at 3%[a]	34,530,000
Discounted at 7%[a]	28,370,000
Alternative 6	
Discounted at 3%[a]	311,800,000
Discounted at 7%[a]	256,000,000

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—QUANTIFIED NET BENEFITS PER YEAR RELATIVE TO THE ALTERNATIVE 3B BASELINE, GREATER YELLOWSTONE AREA, 2007–2008 THROUGH 2016–2017

	Quantified net benefits per year[b]
Alternative 1	
Discounted at 3%[a]	$6,479,000
Discounted at 7%[a]	6,433,000
Alternative 2	
Discounted at 3%[a]	14,410,000
Discounted at 7%[a]	14,360,000
Alternative 3a	
Discounted at 3%[a]	5,257,000
Discounted at 7%[a]	5,233,000
Alternative 4	
Discounted at 3%[a]	3,832,000
Discounted at 7%[a]	3,811,000
Alternative 5	
Discounted at 3%[a]	4,047,000
Discounted at 7%[a]	4,039,000
Alternative 6	
Discounted at 3%[a]	36,550,000
Discounted at 7%[a]	36,450,000

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

[b] This is the total present value of quantified net benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.

Interpretation of Quantified Benefits and Costs

The National Park Service selected Alternative 1 as the preferred alternative; however, Alternatives 6 and 2 each have higher levels of quantified net benefits. Additional factors beyond economics that are relevant in the selection of the preferred alternative include benefits and costs that could not be quantified and distributive equity concerns. For example, Alternative 6 has moderate, adverse visibility impacts due to road sanding operations, which were not quantified in terms of monetized costs. Those costs would reduce the quantified net benefits of Alternative 6 relative to those of Alternative 1. With respect to distributive equity concerns, Alternative 1 better balances the visitor experiences of all modes of access compared to all other action alternatives. That is, Alternative 1 better distributes the benefits of winter access and enjoyment across different ways of enjoying the park. Alternative 2 concentrates the benefits almost exclusively with snowcoach riders. The preponderance of benefits from Alternative 6 benefits are from wheeled vehicle (bus) access on the west side of Yellowstone. These issues are further explained in the section below.

Explanation of Selected Preferred Alternative

The preferred alternative was selected because it best balances winter use with protection of park resources to ensure that adverse impacts from historical types and numbers of snowmobile uses do not occur. It also proactively manages snowcoach operations. The preferred alternative demonstrates the NPS commitment to monitor and use results to adjust the winter use program. The results of the NPS' monitoring program, including data obtained regarding air quality, wildlife, soundscapes, and health and safety were used in formulating the alternatives in the DEIS. The preferred alternative applies the lessons learned over the last several winters relative to commercial guiding, which demonstrated, among other things, that 100% commercial guiding has been very successful and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the parks. Law enforcement incidents have been reduced well below historic numbers, even after taking into account reduced visitation. That reduction is attributed to the quality of the guided program.

The preferred alternative uses strictly limited oversnow vehicle numbers, combined with best available technology requirements and 100% commercial guiding to help ensure that the purpose and need for the environmental impact statement is best met. With access via snowmobile, snowcoaches, or non-motorized means, park visitors will have a range of appropriate winter recreational opportunities. Alternative 1 encourages a variety of ways of accessing the park in the winter, as compared to other alternatives that are more single-mode access. With the significant restrictions built into snowmobile and snowcoach use, this plan also ensures that these recreational activities will not impair or irreparably harm park resources or values.

The preferred alternative also supports the communities and businesses both near and far from the parks and will encourage them to have an economically sustainable winter recreation program that relies on a variety of modes for access to the parks in the winter. Peak snowmobile numbers allowed under the preferred alternative are below the historic averages, but the snowmobile limits should provide a viable program for winter access to the parks, and in combination with snowcoach access, support overall historic visitor use levels.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These conclusions are based on the report ''Economic Analysis of Winter Use Regulations in the Greater Yellowstone Area'' (RTI International, February 2007).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights

or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) OMB has determined that this rule raises novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS has been the subject of numerous lawsuits regarding winter use management.

Regulatory Flexibility Act

The Department of the Interior has determined that this document will have a significant positive economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, an Initial Regulatory Flexibility Analysis has been conducted. This analysis is contained in the report ''Economic Analysis of Winter Use Regulations in the Greater Yellowstone Area'' (RTI International, February 2007). This initial analysis is available on the Yellowstone National Park website. A Final Regulatory Flexibility Analysis will be available upon publication of the final rule.

Alternative 4, which has the highest daily snowmobile limits and allows for 25 percent of snowmobilers to be on non-commercially guided or unguided tours, would most likely result in the largest number of snowmobilers visiting the parks. Therefore, Alternative 4 would likely be the most beneficial to small businesses associated with that mode of access. However, Alternative 6, which allows for guided commercial wheeled access through the North and West entrances, is forecast to have the highest overall visitation. Nevertheless, Alternative 1 was selected as the preferred alternative in part because it balances the visitor experiences of all modes of access compared to all other action alternatives. NPS believes that balance will benefit small businesses associated with all modes of access.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

A Draft Environmental Impact Statement (DEIS) has been prepared and is available for comment. The DEIS is available for review by contacting Yellowstone or Grand Teton Management Assistant's Offices or at *http://parkplanning.nps.gov/*. Comments are being solicited separately for the DEIS and this proposed rule. See the **Public Participation** section for more information on how to comment on the DEIS.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

The NPS has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the previous winter use planning documents. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. The NPS invites your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example § 7.13 Yellowstone National Park.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The primary authors of this regulation are Gary Pollock, Management Assistant, Grand Teton National Park; John Sacklin, Management Assistant, Yellowstone National Park, and; Jerry Case, Regulations Program Manager, National Park Service, Washington DC.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods.

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190.

• Hand Deliver to: Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

All comments must be received by midnight of the close of the comment period.

As noted previously, a DEIS is also available for public comment. Those wishing to comment on both this proposed rule and the DEIS should submit separate comments for each. Comments regarding the DEIS may be submitted online via the NPS' Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/*, or they may be addressed to: Winter Use Plans DEIS, P.O. Box 168, Yellowstone National Park, WY 82190. Additional information about the DEIS is available online at: *http://www.nps.gov/yell/planyourvisit/winteruse.htm*.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. In § 7.13, revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(17) of this section apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (l)(2) also apply to non administrative snowmobile use by the NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(i) *Commercial guide* means a guide who operates as a snowmobile or snowcoach guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this regulation, ''guide'' also means ''commercial guide.''

(ii) *Historic snowcoach* means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

(iii) *Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

(iv) *Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

(v) *Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

(vi) *Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

(vii) *Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and must provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Snowcoaches may only be operated in Yellowstone National Park under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must initially meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle at the time it was manufactured. Beginning in the 2011–2012 season, all snowcoaches (historic and non-historic) must meet NPS air emission requirements, which are the functional equivalent of having EPA Tier I emissions control equipment incorporated into the engine and drive train for the vehicle class (size and weight) as a wheeled vehicle.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Beginning in the 2011–2012 season, all snowcoaches must meet a sound emissions requirement of no greater than 73 dBA.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially

available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have been shown to the Superintendent to have emissions no greater than the limits specified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding six years from the date upon which first certified.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(v) These air and sound emissions requirements do not apply to snowmobiles being operated on the Cave Falls Road.

(7) *Where may I operate my snowmobile in Yellowstone National Park?* (i) You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) The Grand Loop Road from its junction with Upper Terrace Drive to Norris Junction.

(B) Norris Junction to Canyon Junction.

(C) The Grand Loop Road from Norris Junction to Madison Junction.

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(E) The Grand Loop Road from Madison Junction to West Thumb.

(F) The South Entrance Road from the South Entrance to West Thumb.

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(H) The East Entrance Road from Fishing Bridge Junction to Lake Butte Overlook.

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive, between noon and 9 p.m. each day.

(N) North Canyon Rim Drive, between noon and 9 p.m. each day.

(O) Riverside Drive, between noon and 9 p.m. each day.

(P) The East Entrance Road from Fishing Bridge Junction to the East Entrance for the winter of 2007–2008 only.

(Q) Cave Falls Road.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(7) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(A) through (l)(7)(P) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(M) through (1)(7)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes:

(A) Fountain Flat Road.

(B) Riverside Drive.

(C) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(D) East Entrance Road from the park entrance to a point approximately six miles west of the entrance.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one of more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than eight snowmobiles, including that of the guide, or, if two guides are present, no more than 17 snowmobiles, including those of the guides.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(iv) The guiding requirements described in this paragraph (l)(9) do not apply to snowmobiles being operated on the Cave Falls Road.

(10) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the park each day?* The numbers of snowmobiles and snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

TABLE 1. TO § 7.13.—DAILY SNOWMOBILE AND SNOWCOACH LIMITS

Park entrance/location*	Commercially guided snowmobiles	Commercially guided snowcoaches
(i) North Entrance	** 20	13
(ii) West Entrance	424	34
(iii) South Entrance	256	13
(iv) East Entrance	0	***0
(v) Old Faithful	** 20	[1] 18
(vi) Cave Falls	****50	0

* For the winter of 2007–2008 only, the following allocations would be in effect: West Entrance, 400; South Entrance, 220; East Entrance, 40; North Entrance, 30; and Old Faithful, 30.

** These limits may be reallocated between these two aeras as necessary, so long as the total daily number of snowmobiles for the two areas does not exceed 40.

*** A limited number of snowcoaches are allowed to operate between the East Entrance and Sylvan Pass in order to provide skier shuttles

**** These snowmobiles operate on an approximately one-mile segment of road within the park and the use is incidental to other snowmobiling activities in the Targhee National Forest. These snowmobiles do not need to be guided.

[1] Parkride.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle for more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (l)(12) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is subject to §§ 2.18(a) and (c), but not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (l)(14) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other provisions of 36 CFR Part 1.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(16) *May I operate a snowplane in Yellowstone National Park?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited. Each such occurrence of non-compliance with these regulations is a separate violation.

* * * * *

3. In § 7.21, revise paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

(a)(1) *What is the scope of this regulation?* The regulations contained in

paragraphs (a)(2) through (a)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Parkway?* (i) You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and will provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in the Parkway?* (i) Commercial snowcoaches may be operated in the Parkway under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must initially meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle at the time it was manufactured. Beginning in the 2011–2012 season, all snowcoaches (historic and non-historic) must meet NPS air emission requirements, which are the functional equivalent of having EPA Tier I emissions control equipment incorporated into the engine and drive train for the vehicle class (size and weight) as a wheeled vehicle.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emission-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Beginning in the 2011–2012 season, all snowcoaches must meet a sound emissions requirement of no greater than 73dBA.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound requirements as set forth in this section may be operated in the Parkway. The Superintendent will approve snowmobile makes, models and year of manufacture that meet those restrictions. Any snowmobile model not approved by the superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have shown to have air emissions no greater than the restrictions identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the Parkway for a period not exceeding 6 years from the date upon which first certified.

(iv) These air and sound emissions restrictions do not apply to snowmobiles originating in the Targhee National Forest and traveling on the Grassy Lake Road to Flagg Ranch. However, these snowmobiles may not travel further into the Parkway than Flagg Ranch, unless they meet the air and sound emissions and all other requirements of this section.

(v) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the Parkway?* (i) You must operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/191/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(B) Along U.S. Highway 89/191/287 from the Snake River Bridge to the northern boundary of the Parkway.

(C) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(D) Flagg Ranch developed area.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the route designated for snowmobile use in paragraph (a)(7)(i)(B) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may open or close this oversnow route, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(8) also applies to non-administrative snowcoach use by

NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in the Parkway, and what other guiding requirements apply?* All recreational snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the Parkway must be accompanied by a commercial guide. A guide is not required in other portions of the Parkway.

(i) Guided snowmobile parties must travel in a group of no more than eight snowmobiles, including that of the guide, or, if two guides are present, no more than 17 snowmobiles, including those of the guides.

(ii) Guided snowmobile parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the Parkway each day?* (i) The numbers of snowmobiles and snowcoaches allowed to operate in the Parkway each day is limited to a certain number per road segment. The limits are listed in the following table:

TABLE 1 TO § 7.21.—DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Park entrance/road segment	Snowmobiles	Commercial snowcoaches
(ii) CDST*	50	0
(iii) Grassy Lake Road (Flagg-Ashton Road)	50	0
(iv) Flagg Ranch to Yellowstone South Entrance	**256	13

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this trail in both parks.

**Commercially guided; during the winter of 2007–2008 only, the daily entrance limit is 220.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) Towing persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle operator's license. The license must be carried by the driver at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect parkway resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (a)(12) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (a)(13) also applies to non-administrative snowmobiles use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is subject to §§ 2.18(a), (b), and (c), but not to §§ 2.18(d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (a)(14) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources.

(16) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions, or requirements of paragraphs (a)(1)

through (a)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

4. In § 7.22, revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(1) of this part apply to this section. This paragraph (g) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in Grand Teton National Park*? (i) You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Grand Teton National Park*? It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the Superintendent.

(5) *Must I operate a certain model of snowmobile in the park*? Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in Grand Teton National Park*? (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) Unless authorized by the superintendent for a longer period, snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding six years from the date upon which first certified.

(iv) These air and sound emissions requirements do not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the park*? (i) You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming fishing license and the proper fishing gear. Snowmobiles may only be used to travel to and from fishing locations on the lake.

(B) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/191/287 from Moran Junction to the north park boundary.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (g)(7) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park*? You are not required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the numbers of snowmobiles permitted to operate in the park each day*? The numbers of snowmobiles allowed to operate in the park each day are limited to a certain number per road segment or location. The snowmobile limits are listed in the following table:

TABLE 1 TO § 7.22.—DAILY SNOWMOBILE LIMITS

Road segment/location	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST*	50
(ii) Jackson Lake	40

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this route in both parks; however the limit does not apply to the portion described in paragraph (16)(iii) of this section.

(10) *When may I operate my snowmobile*? The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles*? (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle operator's license. The license must be carried by the driver at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle*? In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (g)(12) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles*? The use of oversnow vehicles in Grand Teton is not to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park*? (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(15) *May I operate a snowplane in the park*? The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park*? Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to air and sound emissions, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. Only the following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) The Continental Divide Snowmobile Trail, from the east park boundary to Moran Junction.

(iv) The superintendent may designate additional routes if necessary to provide access to other adjacent public lands.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section*? You may only use those routes designated in paragraph (g)(16) of this section to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile*? Until the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct snowmobile access routes to the inholding or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89/191 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the ''Clark Property.''

(iii) From the Moose-Wilson Road to the land commonly referred to as the ''Barker Property''.

(iv) From the Moose-Wilson Road to those two pieces of land commonly referred to as the ''Halpin Properties.''

(v) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the ''JY Ranch.''

(vi) From Highway 26/89/191 to those lands commonly referred to as the ''Meadows'', the ''Circle EW Ranch'', the ''Moulton Property'', the ''Levinson Property'' and the ''West Property.''

(vii) From Cunningham Cabin pullout on U.S. 26/89/191 near Triangle X to the piece of land commonly referred to as the ''Lost Creek Ranch.''

(viii) The superintendent may designate additional routes if necessary to provide reasonable access to inholdings or adjacent private property.

(ix) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section*? Those routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited*? Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(19) of

this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Dated: April 10, 2007.

David M. Verhey,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E7–9351 Filed 5–15–07; 8:45 am]

BILLING CODE 4312–CT–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[WC Docket No. 07–38; FCC 07–17]

Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission requests comment about how it can continue to acquire the information it needs to develop and maintain appropriate broadband policies. In particular, it seeks comment on: How best to ensure that it receives sufficient information about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas; how it can improve the data about wireless broadband Internet access services that it currently collects on FCC Form 477; and whether it should modify the speed-tier information it currently collects. It also requests comment on how it can best collect information about subscribership to interconnected voice over Internet Protocol service, or VoIP.

DATES: Comments must be filed on or before June 15, 2007, and reply comments must be filed on or before July 16, 2007.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–38, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *fcc504@fcc.gov*, phone: 202–418–0530, or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alan Feldman or Ellen Burton, Wireline Competition Bureau, Industry Analysis and Technology Division, 202–418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WC Docket No. 07–38, released April 16, 2007. The complete text of this document, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It is available on the Commission's Web site: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07–17A1.pdf*, *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07–17A1.doc*, and *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07–17A1.txt*. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, via Web site: *http://www.bcpiweb.com* or phone: 800–378–3160. When ordering documents from BCPI please provide the appropriate FCC document number (in this case: FCC 07–17).

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 15, 2007 and reply comments on or before July 16, 2007. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number (in this case: 07–38). Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Paper filings must be addressed to: Marlene H. Dortch, Secretary; Office of the Secretary; Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Comments filed in WC Docket No. 07–38 will be available for public inspection and copying during business hours at the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. They will also be available via the

Commission's ECFS: *http://www.fcc.gov/cgb/ecfs/*.

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. In this *NPRM*, the Commission seeks comment about how it can continue to acquire the information it needs to develop and maintain appropriate broadband policies. First, the *NPRM* seeks comment about how the Commission can best ensure that it receives sufficient information about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas, including tribal lands. Second, it seeks comment about how the Commission can improve the data about wireless broadband Internet access services that it currently collects on FCC Form 477. Third, it asks whether the Commission should modify the speed-tier information it currently collects. Fourth and finally, it seeks comment about how the Commission can best collect information about subscribership to interconnected voice over Internet Protocol (interconnected VoIP) service.

2. The *NPRM* specifically solicits comment about the balance between the burden of additional data collection and the benefits such information provides.

II. Background

3. To date, the Commission has based its analysis of nationwide broadband deployment on three sources of information: data submitted on FCC Form 477; public comment submitted in response to inquiries undertaken pursuant to Section 706(b) of the Telecommunications Act of 1996, Public Law 104–104; and ancillary information gathered by Commission staff from publicly available sources. The Commission adopted the Form 477 program in 2000, after concluding that the collected information would materially improve its ability to develop, evaluate, and revise policy regarding broadband deployment and local telephone service competition, and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers. Pursuant to the broadband portions of the Form 477, facilities-based providers of broadband connections list, by state, those Zip Codes in which they have at least one broadband subscriber. Reporting entities include incumbent and competitive local exchange carriers (LECs), cable companies, operators of terrestrial and satellite wireless facilities, municipalities, and any other facilities-based provider of broadband connections to end users.

4. The Commission significantly improved the Form 477 in 2004 by extending the data collection program for five years beyond its original sunset; eliminating reporting thresholds which effectively exempted small entities from reporting requirements; requiring more granular reporting of broadband data, *e.g.*, about services offered at speeds in excess of 200 kbps, about symmetric xDSL connections as distinguished from T–1/DS1 and other ''traditional wireline'' connections, and about power line connections; requiring technology-specific lists of Zip Codes; requiring cable companies to report, by state, the extent to which cable modem service is available to the households to whom they can provide cable TV service, and requiring incumbent LECs to report comparable information about their DSL connections; and adopting various other modifications. The Commission acknowledged that mobile broadband services differ in particular respects from fixed broadband services—noting that the end user of a mobile wireless broadband service must be within a mobile wireless broadband service coverage area to make use of the service, but may move around within and among coverage areas—and made provisions for such differences in the data collection. The Commission rejected suggestions to add to the Form 477 questions specifically about VoIP service, noting that only a very small portion of local telephone service was being provided by entities exclusively utilizing VoIP and that LECs may already include information about VoIP subscribers in their Form 477 filings.

5. Based in large part on analysis of Form 477 data, the Commission's various reports have demonstrated significant and steady progress in broadband deployment and availability nationwide. Reflecting such robust deployment statistics, the Commission's Section 706 reports have consistently concluded that broadband is being deployed nationwide in a reasonable and timely fashion.

6. A report issued by the United States Government Accountability Office (GAO), *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* (May 2006), reviews the strengths and weaknesses of available data about broadband availability, including FCC Form 477 data. The report concludes that, while broadband deployment is extensive nationwide, it remains very difficult to assess the extent of deployment gaps in rural areas. It recommends that, in order to develop a better understanding of the dynamics of broadband deployment and availability in rural areas particularly, the Commission should ''develop information regarding the degree of cost and burden that would be associated with various options for improving the information about broadband deployment.''

7. Mobile wireless services have developed rapidly since the Commission revised the Form 477 program in 2004, as nationwide mobile telephone operators Verizon Wireless, Sprint Nextel, and Cingular, and some regional wireless carriers such as Alltel, have expanded or initiated their deployment of Third Generation (or ''3G'') wireless networks based on the EV–DO and WCDMA/HSDPA standards.

8. Interconnected VoIP subscribership in the United States also appears to have grown rapidly. In a separate proceeding, the Commission has explained that the growth of interconnected VoIP services is one of the changing market conditions that are placing under significant strain the existing system to preserve and advance universal service, which is a fundamental goal of communications policy in the United States.

III. Discussion

9. Notwithstanding the robust statistics and the more granular broadband data that have been reported on FCC Form 477 beginning September 1, 2005, the Commission continues to consider the need to improve its data collection, particularly regarding data reflecting broadband deployment and availability in rural and other hard-to-serve areas, and also regarding subscribership to new broadband-enabled services such as interconnected VoIP service.

10. *Broadband Deployment Data*. In rural and other hard-to-serve areas, the Commission questions whether submission of simple Zip Code information such as that currently required by the Form 477 is sufficient to provide a truly accurate picture of the state of broadband deployment.

Wireline broadband service providers filing Form 477 are currently required to list those Zip Codes where they have at least one broadband subscriber. In sparsely populated rural Zip Codes this could mean that a given provider has just one broadband subscriber who is located in a small town or at some other location convenient to telephone or cable facilities. Broadband ''availability'' could be non-existent for that carrier's other customers located a few blocks or many miles away from that single customer. Ideally, information would be available about the choices that a customer faces on a house-by-house and business-by-business basis. The *NPRM* discusses several options that might move the Commission closer to that ideal.

11. *Wireless Broadband Data.* The Commission believes it should modify the Form 477 reporting instructions for wireless broadband providers in certain respects and seeks comment on how best to do so.

12. First, the Commission believes that it should modify the reporting instructions for terrestrial mobile wireless providers to solicit data that will enable the Commission to distinguish among the numbers of subscribers to month-to-month or longer term broadband Internet access packages and casual users. In the current Form 477, information about numbers and types of broadband connections is collected in Part I.A, where filers are directed to ''[c]omplete Part I.A if you provide one or more lines or wireless channels in the state that connect end users to the Internet [at broadband speed].'' However, the detailed reporting instructions for terrestrial mobile wireless providers are to ''[r]eport the number of subscribers to broadband services provided over terrestrial mobile wireless facilities * * *.'' More specifically, the instructions are to ''report the number of end users whose mobile device, such as wireless modem laptop cards, smartphones, or handsets, are capable of sending or receiving data at speeds in excess of 200 kbps * * *.'' The Commission finds that it is currently unable to determine from the reported data the number of subscribers who make regular use of a broadband Internet access service as part of their mobile service package. Moreover, the Commission believes the current instructions make it likely that more and more mobile voice service subscribers will be reported as mobile broadband subscribers merely by virtue of purchasing a broadband-capable handset, rather than a specific Internet plan.

13. The Commission has observed that many mobile data services are marketed primarily as an add-on to mobile voice service. These services include mobile data services that enable subscribers to send text and multimedia messages, download ringtones and games, and access other content on handsets, as well as mobile data services that enable subscribers to browse web sites customized for handsets. The Commission has discussed how mobile service subscribers who wish to browse web sites customized for handsets generally may choose a month-to-month plan that includes such browsing, and that some carriers also offer a casual usage plan. And the Commission has observed that, aside from handset-based applications, mobile wireless carriers offer month-to-month Internet access packages for data users who access the Internet through laptop computers or certain Personal Digital Assistants (''PDAs''), including mobile wireless Internet access packages for wireless broadband networks.

14. Based on these observations about various mobile wireless data services, the *NPRM* seeks comment on whether the Commission should revise the Form 477 instructions to require mobile wireless providers to report, separately, the number of month-to-month (or longer term) subscriptions to broadband Internet access service designed for wireless devices that have their own browsers (''full Internet browsing'' for purposes of this *NPRM*), such as laptop computers and PDAs. The *NPRM* also asks whether the Commission should require mobile wireless providers to report, separately, the number of month-to-month (or longer term) subscriptions for broadband-speed browsing of customized-for-mobile web sites (''mobile web browsing'' for purposes of this *NPRM*). Further, the *NPRM* seeks comment on whether the Commission should require mobile wireless providers to report, separately, the number of unique mobile voice service subscribers who are not month-to-month (or longer term) subscribers to an Internet access service, as discussed above, but who nevertheless made any news, music, video, or other entertainment downloads to the subscriber's handset at broadband speed during the month preceding the Form 477 reporting date (*i.e.*, during June, or during December). The *NPRM* seeks specific comment on whether the above-described delineations among types and levels of service are appropriate in light of market and technological factors. Commenters should explain how an alternative approach would ensure that mobile voice service subscribers will not be reported as mobile broadband subscribers merely by virtue of purchasing a broadband-capable handset, rather than a specific Internet plan.

15. The *NPRM* also seeks comment about whether the Commission should modify any other parts of the Form 477 instructions for mobile wireless broadband providers. The current instructions direct these providers to include in their subscriber counts those end users ''whose billing addresses are within the areas of terrestrial mobile wireless broadband availability * * *.'' The idea behind this instruction is that end users should not be reported as broadband subscribers if they are not generally present in an area where mobile broadband service is available. While this may become less likely as wireless broadband networks are more extensively deployed, it appears that some voice service subscribers are reported as mobile broadband subscribers only because they have broadband-capable handsets and that this may include persons who do not reside (or work) where mobile broadband is available. However, the billing address for some business end users may not indicate where the broadband Internet access service is primarily used, *i.e.*, if a single corporate address is the billing address for subscriptions used by employees working in various areas. Therefore, the *NPRM* invites comments on how this particular instruction might be improved, while keeping in mind that the Commission does not want to count, as broadband subscribers, mobile voice service subscribers who have purchased a broadband-capable handset but not an Internet plan.

16. The *NPRM* also seeks comment about how the Commission could improve the Form 477 instructions for reporting the percentage of mobile wireless broadband subscribers who are residential end users. Experience with the current Form 477 suggests that mobile wireless broadband providers are not using comparable methodologies to estimate the residential percentage. In the latest aggregated Form 477 data, about 11 percent of mobile wireless broadband subscribers are reported as residential. This percentage may be low, since broadband-capable handsets are widely available and appear to be an increasingly popular consumer product. Therefore, the *NPRM* seeks comment on whether the Commission should modify the instructions for mobile wireless broadband providers to require that they report, as residential subscribers, all subscriptions that are not billed to a

corporate customer account, to a non-corporate business customer account, or to a government or institutional account. Would this modification result in more accurate estimates of residential end users than the Commission currently receives? Are there different modifications to the current reporting instructions that would yield even better estimates? Or, instead, should the Commission explicitly require providers to undertake special studies for this purpose?

17. Regarding wireless broadband Internet access services more generally, the *NPRM* invites comment in three areas. First, it asks whether, and how, the Commission could modify our Form 477 instructions to collect useful information about households and businesses who subscribe to commercially deployed community Wi-Fi broadband Internet access service, for primary use at the subscriber's residence or business location. Second, it specifically invites comment on whether the Commission should add a terrestrial portable (or nomadic) wireless broadband technology category to the Form 477. Adding this technology category could provide the Commission with an improved ability to monitor the development of terrestrial wireless broadband services, including services over WiMax infrastructures, which need not be used on a fixed basis but cannot be used while traveling at high speeds with signal handoff. Third, it seeks comment on whether the Commission needs to clarify how the Form 477 instructions apply to satellite broadband capabilities provided by carriers to enterprise customers who operate their own corporate networks.

18. *Speed Tiers*. The *NPRM* seeks comment on whether the Commission should refine the speed-tier information currently collected on Form 477 by splitting into two tiers the speed tier defined by information transfer rates greater than 200 kbps and less than 2.5 mbps. Specifically, would be appropriate to define the lower of the resulting two tiers by information transfer rates greater than 200 kbps and less than 1.0 mbps?

19. The *NPRM* asks whether the Commission should develop a higher or more varied measurement of broadband speed in the Form 477 program. Do the current speed-tier definitions enable the Commission to understand the evolving dynamics of the broadband marketplace as providers offer faster and faster connections? Would the Commission's understanding of the rapidly evolving broadband marketplace be enhanced if it raised the current minimum threshold for reporting the speed-tier information specified on Form 477 (*i.e.*, greater than 200 kbps in both directions)? More generally, should the Commission's definition of broadband allow different upstream and downstream speeds? The *NPRM* also asks if the Commission should raise the current minimum threshold for reporting *any* connections on the Form 477 (*i.e.*, greater than 200 kbps in at least one direction, which is generally ''downstream'' to the end user)? Do services with downstream connection speeds only slightly greater than 200 kbps continue to be an important stepping stone for broadband adoption by households, including households in rural and other hard-to-serve areas?

20. The *NPRM* seeks comment on whether and how the Commission could establish a system whereby the Form 477 speed tiers would be automatically adjusted upwards over time to reflect technological advances. What information would the Commission need to design a meaningful system? Would the bandwidth requirements of particular services and applications provide useful guidance? The *NPRM* specifically invites comment on the extent to which there is general industry agreement on the bandwidth requirements of such regularly cited applications as distance learning, telemedicine, downloading of movies, latency-sensitive video services, and high definition TV. How should the Commission account for differences in the bandwidth requirements of particular applications across different delivery platforms (*e.g.*, high definition TV requires about half of a 6 MHz channel on a cable system using 264 QAM modulation and MPEG–2 compression encoding, but about half that bandwidth when MPEG–4 encoding is used)?

21. The *NPRM* asks whether broadband providers are placing their reported broadband connections into speed tiers in a consistent manner. It seeks comment on industry practices for matching advertised ''up to'' speeds with probable customer experience. The Commission also wishes to refresh the record on whether the Commission effectively could modify the Form 477 reporting instructions to require filers to categorize broadband connections by the download and upload speeds experienced by actual customers rather than the theoretical maximum that a given network can support or the particular service configuration allow. Are there existing, administratively workable industry standards or practices for measuring typical or actual speeds delivered to end users?

22. *Interconnected VoIP Subscribership Data*. At present, only some LECs include interconnected VoIP subscribers in the local telephone service information they report on Form 477. Interconnected VoIP service providers who are not LECs are not required to file Form 477. Therefore, the *NPRM* invites comment on how the Commission could modify the Form 477 to collect useful information about the number of interconnected VoIP service subscribers in service in the least burdensome manner. It specifically invites comment on whether collecting the following state-level information, from all retail and wholesale providers of interconnected VoIP service, would yield sufficient information for us to track deployment and adoption of VoIP service across the nation. The *NPRM* proposes requiring all retailers of interconnected VoIP service to report: (1) The number of interconnected VoIP subscribers in service for whom the filer is the service retailer, (2) the percentage of retail interconnected VoIP subscribers who are residential, as opposed to business, end users, and (3) the percentage of retail interconnected VoIP subscribers who receive that service over a broadband connection provided by the filer (or by the filer's affiliate). The *NPRM* also proposes requiring wholesalers of interconnected service to report the number of interconnected VoIP service subscribers the filer serves on a wholesale basis.

23. *Proposals for Refining Commission Analysis of Broadband Deployment and Availability*. The *NPRM* discusses several possible methods for increasing the Commission's understanding of broadband deployment and availability. Some approaches for increasing our understanding of broadband deployment place little or no additional burdens on data filers but may yield commensurately modest analytic benefits. Other approaches could yield a more detailed and dynamic understanding of broadband deployment, some of which could prove to be costly to data reporters or impractical. The *NPRM* seeks comment about whether, and how, data filers should be required to report information about the prices at which they offer broadband services. It seeks comment about the technical feasibility, costs and benefits of each of the approaches discussed below. In order to appropriately analyze the costs and benefits of each approach/proposal, the Commission seeks evidence that quantifies the costs of each alternative, including initial set up costs, recurring

direct costs and reasonably attributable indirect costs. Commenters should identify all costs with as much precision as they can and should identify and analyze the potential benefits that each approach yields. The Commission also invites commenters to suggest and to explain in detail alternative methods of data collection beyond those identified herein.

24. The Commission concluded in 2004 that the benefits to the policymaking process that derive from requiring all filers—including smaller entities that serve sparse populations over wide geographical areas—to report the same data outweigh the reporting burdens on new Form 477 filers (*i.e.*, entities required to file Form 477 once mandatory reporting thresholds were eliminated). The Commission recognized, however, the particular concerns about the reporting burdens of some smaller carriers, and consequently decided not to pursue at that time certain options similar to options about which this *NPRM* seeks comment. Therefore, this *NPRM* seeks comment on whether, if the Commission requires the submission of additional information, it should require all filers to report those data. The *NPRM* also invites comment on ways to mitigate the burden on smaller filers short of implementing reporting thresholds or other exemptions.

25. *Additional Analysis of Current Broadband Subscribership Data.* The *NPRM* first asks whether the Commission could more closely analyze the broadband subscribership data it currently collects to identify more precisely the areas where broadband is not available, particularly to households. For example, currently available data suggest that about 12 percent of 5-digit geographical Zip Codes have no providers of primarily residential, wired high-speed Internet access services delivered over ''last mile'' facilities the provider primarily owns. These Zip Codes contain about 2 percent of the U.S. population. Should the Commission simply identify such areas for further, individual study? For these identified areas, should it analyze the full range of competitive choices including deployed broadband infrastructure, service offerings in the marketplace, and service offering prices? How should the Commission conduct such studies? Do existing data sources available to the Commission, including the Form 477 data, allow it to study the needs of discrete communities of users, for example, Native Americans on tribal lands? Are there better and more fruitful ways to frame questions about Form 477 data in the context of particular technologies utilized by broadband providers, for example, providers using satellite technology?

26. As the Commission considers the possible need for additional data, it remains vigilant for ways to use the data it has currently as effectively as possible. GAO worked with a state broadband alliance (ConnectKentucky) to use their data to troubleshoot Form 477 data regarding broadband availability in Kentucky. Based on its comparison analysis, GAO concluded that the Form 477 data ''may overstate the availability and competitive deployment of nonsatellite broadband.'' Should the Commission explore collaborations, such as the one between GAO and ConnectKentucky, to troubleshoot its own data or to prepare discrete state or region-specific reports? How feasible is this given related costs and company concerns about sharing confidential information with private/commercial third parties? Would information developed by collaboration with various third parties be consistent? Which states have public-private economic development or other initiatives that have developed comprehensive localized information about broadband availability? Where such information exists, can it be shared with the Commission? Where such information does not exist, are there plans to develop it? For example, might the ConnectKentucky approach be readily adaptable in other states? In sum, the *NPRM* invites comment regarding methods of analyzing currently available data that could provide better or more focused insights into the dynamics of broadband deployment and availability nationwide or in particular geographic regions, in connection with specific technologies, or with regards to the needs of discrete communities of users.

27. The *NPRM* seeks comment on ways to better utilize Zip Code data currently submitted by Form 477 filers. Would requiring filers to submit customer counts along with Zip Code lists facilitate better analysis of broadband availability/deployment in specific Zip Codes? The Commission is skeptical that analysis of customer totals submitted at the 5-digit level of aggregation could significantly increase our understanding of the dynamics of broadband availability and deployment, *i.e.*, because any methodology based on a 5-digit Zip Code aggregation will continue to yield results that do not accurately depict broadband availability in particular, localized areas within a Zip Code. Nevertheless, the *NPRM* seeks comment on whether such an approach could be fruitful. In particular, the Commission seeks detailed comment regarding the costs as well as the benefits of such an approach. It asks commenting providers to provide projected costs and related analysis at a level of detail sufficient to support their assertions, as well as other relevant information. For example, what steps would providers have to implement to furnish this information per available network/system technology and personnel and other resources? Do the characteristics of particular technologies make counting subscribers by Zip Code problematic and, if so, are there useful substitute approaches for those technologies? The *NPRM* asks commenters to estimate separately the cost for an initial collection, which would presumably entail certain start-up costs, and the cost of subsequent collections, which might be able to realize certain efficiencies.

28. The *NPRM* invites comment on whether the Commission should require all broadband providers to report the number of residential customers served (in place of the current requirement to report the percentage of total broadband connections in service that are residential connections) and also the number of homes ''passed'' by their broadband-enabled infrastructure. Collecting both the number of residential customers served and the number of homes passed by each Form 477 filer's broadband-enabled infrastructure could enable the Commission to calculate and compare consumer broadband uptake figures (*i.e.*, the ratio between adoption and availability). The *NPRM* seeks specific comment on how ''passing'' should be defined for this purpose, for each of the broadband technologies specified in the current Form 477, to enable us meaningfully to compare consumer uptake figures.

29. The *NPRM* asks generally whether there are other ways in which the Commission could make better use of the broadband data it currently collects on Form 477. For example, the semiannual report based on the Form 477 data includes tables showing how broadband Internet subscribership varies among 5-digit geographical Zip Codes based on population density and household incomes. The Commission is able to develop these tables because a commercial vendor has translated Census Bureau data (which is not collected by Zip Code) into Zip Code-level data for those particular variables (*i.e.*, population density and income). The *NPRM* invites commenters to identify, with specificity, comparable commercial products that translate, to the Zip Code level, Census Bureau

information about household education, race (including tribal lands), or disability status, so that the Commission might include in its semiannual report tables showing how broadband Internet subscribership varies among Zip Codes based on these demographic variables.

30. The *NPRM* also invites comment on whether the Commission's semiannual report should include figures about international broadband adoption, prices, or other measures that are developed by the Organization for Economic Cooperation and Development (OECD) or the International Telecommunications Union (ITU). It asks for comment about which such figures the Commission should include. Ideally, any such figures will be published regularly and will be based on comparable definitions, measurement standards, and reporting practices. The *NPRM* asks, in particular, if a regularly published, reliably comparable figure is available on the cost per bit in leading industrial nations (for both residential and business customers). More generally, how could the Commission conduct a regular analysis of broadband policies in other nations and how their regulatory policies have played out? The *NPRM* seeks specific comment on whether and how the Commission should present such an analysis, *e.g.*, either in its semiannual report or the less frequent Section 706 report.

31. *Subscribers per 9-digit Zip Code.* The *NPRM* seeks comment about whether the Commission should require Form 477 data filers to submit 9-digit Zip Codes and associated customer counts. A 9-digit level of geographic aggregation coupled with such customer information could provide more granular information about deployment than 5-digit information. Nevertheless, associated costs could be greater. The *NPRM* asks, specifically, whether current Form 477 filers, including any of their affiliates, or their marketing partners or agents maintain information about the end-user termination locations (*e.g.*, service addresses) of wired and fixed wireless broadband connections that includes the 9-digit Zip Codes of those locations—particularly information about residential end-user termination locations. If not, do Form 477 filers maintain billing address information at the 9-digit Zip Code level, and would such data be a sufficiently accurate proxy for service location? Do Form 477 filers typically maintain any other types of information that could be used to identify the 9-digit Zip Codes of end-user termination locations? The *NPRM* asks commenters to undertake the same kind of cost/benefit analysis regarding 9-digit Zip Code data as discussed in the previous paragraphs, *i.e.*, by discussing costs associated with implementation and associated potential benefits. It also seeks comment about whether there is significant value associated with simply requiring data filers to report lists of 9-digit Zip Codes where they have at least one customer, but without requiring associated customer counts by Zip Code.

32. *Purchase of Commercial Databases or Services.* The *NPRM* seeks specific comment regarding the availability of commercial sources of broadband deployment data or data-processing programs that could augment or otherwise add value to the Commission's use of Form 477 data, or reduce the associated costs and other burdens imposed on reporting providers. What existing databases could the Commission combine productively with the current Form 477 data? Are such databases accurate, current, and national in scope? The *NPRM* asks, specifically, whether the online-search software, and associated databases, that many broadband providers have developed to allow households to check whether broadband service is available at their home telephone number, street address, or Zip Code can readily be adapted to provide localized broadband deployment information. Do data-processing or consulting companies exist whose operations or services could add value, or diminish associated collection burdens? For example, if (as discussed below) the Commission decides to require additional Zip Code information (9-digit codes) or subscriber information per Zip Code in connection with the current Form 477 program, would it be feasible and/or desirable for a data-processing company, rather than the provider itself, to add 5-digit or 9-digit Zip Codes to subscriber lists, and to identify the number of subscribers per Zip Code? Would there be economies of scope and scale to a region- or nationwide contract that would make such private assistance affordable to providers? Would such an approach raise special concerns about confidentially-submitted company information or consumer privacy, and how could such concerns be addressed? As the Commission seeks to understand more clearly the cost to providers of gathering and reporting additional broadband data, should it also explore engaging commercial data processors to conduct sample surveys and report sample information? Commenters are encouraged to carefully consider such approaches to current data augmentation as well as ways to reduce associated burdens.

33. *Geocoded Information about Subscriber Locations.* The *NPRM* also seeks comment about non-Zip Code based approaches to using subscriber-based information to more precisely identify the geographic areas where broadband is deployed, such as requiring providers to report geocoded information (*e.g.*, latitude and longitude) for the premises of their subscribers. Requiring subscriber counts by Zip Code could prove to be the least costly and most feasible change to our Form 477 data collection, *i.e.*, to most efficiently produce additional information that would materially advance the Commission's understanding of broadband availability. Are there other, more exact and accurate means of attaining that goal? How would such a method of data collection operate? The *NPRM* encourages suggestions from commenters that envision a non-Zip Code based approach to data collection, particularly alternatives that would yield data that is at least as granular as 9-digit Zip Code data augmented with customer counts by Zip Code.

34. *Develop Automated System of Voluntary Reporting by Non-served Households.* The *NPRM* also seeks comment about the feasibility and value of implementing a voluntary self-reporting system by non-served households, patterned after the National Do-Not-Call Registry. Under this proposal, non-served households could identify themselves at a Commission-maintained electronic bulletin board (web page address) and/or telephone number call-in address where they would provide the limited information, *e.g.*, home address with (preferably 9-digit) Zip Code, and the wired or fixed wireless telephone number at that particular location, that is needed to identify the particular non-served location. Would such a system be an effective and efficient way to identify localized areas where broadband services are not available? Would the reported information be accurate or, for example, might potential subscribers not be aware of all broadband options available to them? Would such a system in fact enable the Commission and other governmental entities to focus (limited) government resources to encourage broadband availability more efficiently, *i.e.*, by targeting areas where there is evidence of actual demand for broadband services? The *NPRM* seeks comment on the costs and potential benefits of such a proposal.

35. *Broadband-enabled Service Territory Report by Provider*. Each of the previously discussed approaches relies on *broadband subscription* as a proxy for broadband availability. The approaches assume that, in Zip Codes where none or very few of the residents subscribe to broadband services, such services are unavailable, and vice versa. As GAO has found, while broadband infrastructure deployment is extensive, information about where subscribers are served may not depict with a high degree of accuracy the local deployment of broadband, especially in rural areas. Alternatively, the Commission could require data filers to report information about their customers and the broadband-enabled service territory—*i.e.,* the specific geographic area, which might include only parts of particular Zip Codes—where they offer and/or currently deploy broadband services, particularly residential services. By collecting and studying such data comparatively, the Commission could arrive at a far clearer understanding of the actual dynamics of broadband availability in discrete geographic areas and to different communities of users. The *NPRM* seeks comment about the need for and feasibility of requiring broadband providers to report information that delineates in detail the boundaries of their broadband-enabled service territories. What methodologies are available for developing such information? What requirements would the Commission need to specify to ensure that providers apply a methodology with enough uniformity to yield useful information? Terrestrial mobile wireless broadband service providers are currently required to report Zip Codes that best represent their coverage areas. Does this standard yield a sufficient level of detail about the deployment of those services? Are there alternate or additional reporting requirements that would provide more useful data on mobile wireless broadband deployment without imposing an undue burden on the providers? The *NPRM* asks commenters to undertake the same kind of cost/benefit analysis discussed earlier with respect to 5-digit and/or 9-digit Zip Code information, *i.e.,* by discussing costs associated with implementation and associated potential benefits.

36. While, at present, precise information about the boundaries of the localized areas where broadband is generally available might be difficult for certain broadband providers to gauge, results achieved by broadband mapping initiatives such as those in Kentucky and Wyoming suggest that the difficulties are not insurmountable. For example, municipal cable systems and the Kentucky Cable Telecommunications Association (KCTA) are working with ConnectKentucky to map in fine detail (*e.g.*, street-by-street, and sometimes block-by-block) the boundaries of the areas where cable modem broadband is available. The Kentucky mapping initiative has identified localized areas of DSL broadband availability by obtaining, from at least some carriers, detailed location information (*i.e.,* latitude and longitude) for the carrier's DSL-enabled wire centers and remote terminals, and assuming that DSL service is available within a 13,200-foot (2.5-mile) radius around the DSL-enabled equipment. The Kentucky initiative has also collected detailed facilities information (*e.g.*, latitude and longitude of towers, type of antenna technology, whether coverage is omni-directional or partial) from at least some commercial providers of wireless broadband service. Therefore, the Kentucky experience suggests that providers can delineate their areas of broadband deployment at much finer levels of detail than the Zip Code based data now collected on Form 477. The Commission is also aware that, in localized areas where broadband is generally available, site-specific factors may impede availability to individual households. What steps, if any, should the Commission take to enable providers to report broadband availability, not by subscriber proxy but by actual territory served (*e.g.,* a data collection or mapping system)?

37. The *NPRM* invites comment on whether this approach is feasible for tribal lands and how it could most effectively be implemented on tribal lands. As GAO found in its report *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands (January 2006),* subscribership to Internet-access services (of any speed) by Native American households on tribal lands is unknown because no federal survey has been designed to track this information. As GAO also found, the Commission's Form 477 data cannot be used to determine the number of residential Internet subscribers on tribal lands. The *NPRM* seeks specific comment on how the Commission can best measure broadband deployment/availability and adoption on tribal lands.

38. *Other Alternatives.* The *NPRM* asks whether there are other alternatives the Commission can explore to better identify the extent of broadband deployment in rural areas and tribal lands across the nation.

39. *Extrapolating Nationwide Competitive Conditions from Conditions in Representative Areas.* The *NPRM* invites comment on whether, even if more granular data cannot reasonably be collected across the entire country, it would be appropriate and feasible for the Commission to develop more accurate estimates of the competitive choices in representative urban, metropolitan, exurban, low-income, tribal, and rural areas and then use weighted extrapolation techniques to get a picture of nationwide competitive conditions. It asks whether detailed infrastructure deployment maps for representative areas could be developed, based on the location of municipal cable-system facilities and local exchange carrier DSLAMs, which would give a house-by-house picture of where those broadband infrastructures are deployed.

40. The *NPRM* seeks comment on whether the Commission should collect key demographic information (*e.g.,* income, education, race (including tribal status), and disability status) about households located in those parts of the representative areas in which cable modem or DSL infrastructures have been deployed, to illustrate the relationship between these factors and broadband adoption. Which demographic variables should the Commission measure? Does conducting meaningful analysis require demographic information about individual households? If it does, could the cable system and/or DSL service provider in the representative area provide that information? Alternatively, could the Commission effectively use publicly available Census Bureau detailed demographic information (which would not identify individual households)? In general, are there public sources of detailed demographic information for representative areas? Commenters who are aware of such sources should identify them with specificity and explain why they are appropriate to use.

41. The *NPRM* asks if the Commission should also collect income, education, and other demographic information about households located in the parts of the representative areas where broadband infrastructures have not been deployed, to illustrate the relationship between these factors and broadband deployment. Which demographic variables should the Commission measure? Could the cable system and DSL service provider (or the local exchange carrier, if DSL infrastructure has not been deployed) provide that information? Would it be more cost effective or appropriate to use

demographic information that is publicly available from the Census Bureau (which does not identify individual households)? Are there publicly available commercial sources of geographically detailed demographic data that the Commission could use? The *NPRM* asks commenters to identify such sources with specificity and to explain why they are appropriate to use.

42. The *NPRM* asks whether collecting detailed information about deployment of two broadband technologies (*i.e.*, cable modem and DSL) would be sufficient to inform broadband policy making. Are there any other broadband technologies for which it is feasible to develop a house-by-house picture of infrastructure deployment and key household demographic variables (*e.g.*, income, education, race (including tribal status), and disability status) in representative areas?

43. The *NPRM* invites specific comment on how the Commission should identify particular areas as representative areas, to ensure that weighted extrapolation techniques will provide a statistically accurate picture of nationwide competitive conditions. Is there at this time a known set of such representative areas? If not, what is the Census Bureau or other source of data that can be used to select specific areas to represent urban, metropolitan, exurban, low-income, tribal, and rural areas, respectively? The *NPRM* asks commenters to identify that data source, or sources, with specificity and to explain why the source is appropriate to use. Should the extent of broadband deployment in an area be taken into account in selecting the representative areas? If so, how should it be taken into account? As noted above, there is a detailed broadband deployment mapping initiative underway in Kentucky. While there are no tribal lands in Kentucky, would it be appropriate for the Commission to select Kentucky areas to represent each of the other types of areas (*i.e.*, urban, metropolitan, exurban, low-income, and rural)?

44. The *NPRM* asks for comment about how to select a representative area for tribal lands, in particular. As GAO has found, tribal lands vary dramatically in size, demographics, and location. GAO conducted interviews with 26 tribes and 12 Alaska regional native nonprofit organizations and visited 6 of the tribes that have taken action to improve their telecommunications. The *NPRM* seeks comment on whether, and why, a particular one of the six tribes would be an appropriate choice for the representative tribal lands area.

45. *Price, Broadband Availability, and Consumer Uptake.* The *NPRM* seeks comment on whether and how the Commission could collect price information that depicts competitive choice in representative areas. Would it be sufficient to collect price information only for cable modem and DSL service options? If so, should the Commission collect price information for the full range of cable modem and DSL service options in the representative areas? How should it treat the prices of introductory offers and bundled services? Should it calculate separate representative prices for residential and non-residential service offerings? How should it treat service offerings that appear both in advertisements for residential services and in advertisements for business services?

46. The *NPRM* also asks whether the Commission should modify Form 477 to collect price information from all entities that report broadband connections. What price information should it collect? Should it collect the price information at the Zip Code, state, regional, or national level? What would be an appropriate way to define a region for this purpose? Should the Commission require filers to estimate and report the cost of residential broadband services measured as price per bit?

47. The *NPRM* seeks specific comment on whether and how the Commission could provide a deeper understanding of the market for broadband services by collecting price information and comparing it to consumer uptake of broadband (*i.e.*, the ratio between adoption and deployment). Commenters should address how non-price variables found to be correlated with consumer broadband uptake (*e.g.*, income, education, race (including tribal lands), and disability status) should be incorporated into the comparison.

Procedural Matters

Ex Parte Rules. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte rules*. 47 CFR 1.1200 *et seq*. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission seeks comment on various proposals that would deepen and refine its current understanding of broadband availability and deployment and its understanding of end user adoption of relatively new broadband-enabled services such as interconnected VoIP service. The Commission believes that a better understanding would assist it to adopt policies to promote the deployment of broadband services. At the same time, it recognizes that certain methods of collecting more precise data might impose burdens on small entities, and invites comment on ways to mitigate burdens on smaller entities. In this regard, the *NPRM* proposes many methods for collecting further data and analyzing current data that would impose little or no burden on small entities whatsoever.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the *NPRM* is contained in Sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by

the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). As discussed in sections D and E below, many of the proposals contained in the *NPRM* would not impose any burden whatsoever on small entities. However, to the extent that other proposals contained in the *NPRM* might impact small entities, those possible entities are listed below. The Commission has perhaps been overbroad in the list of entities directly affected, below, in an effort to encourage comment.

5. As noted above, in addition to covering small businesses, the RFA covers small organizations. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

6. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Wireline Carriers and Service Providers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

10. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone

services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

15. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

17. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

18. *Wireless Carriers and Service Providers.* Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

19. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

20. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small. This information is also included in the discussion of Wireless Telephony, below.

21. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the *Paging Third Report and Order*, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with

its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

22. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

24. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

25. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

26. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

27. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were

sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

28. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

29. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

30. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

31. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

32. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

33. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

34. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the

Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

35. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

36. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

37. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $13.5 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers. The license terms require the licensees to build their wireless facilities within ten years of the grant. As a result, more information on the licensees will become available in the year 2008, when the licensees are required to show the Commission that they have achieved substantial service as part of the application renewal process.

38. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

39. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

40. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

41. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small

if it has $13.5 million or less in average annual receipts.

42. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

43. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

44. *Cable and OVS Operators.* In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because Section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

45. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

46. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

47. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

48. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

49. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we

estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

50. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

51. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

55. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

56. In the *NPRM*, many of the proposals to increase the Commission's understanding of broadband availability would impose no reporting, recordkeeping or other compliance requirements on small entities. However, the *NPRM* invites comment on several other proposals that would impose further reporting and recordkeeping requirements on current Form 477 filers. Specifically, the *NPRM* invites comment on whether current Form 477 filers should (1) report numbers of subscribers per 5-digit Zip Code, (2) report 9-digit Zip Codes where there is at least one subscriber or report numbers of subscribers per 9-digit Zip Code, (3) report geocoded information about subscriber locations, or (4) report information that delineates in detail the boundaries of their broadband-enabled service territories. The *NPRM* also seeks comment on whether the Commission should (1) refine the speed-tier information the Commission currently collects by splitting an existing speed tier into two; (2) require all broadband filers to report the number of residential customers served and also the number of homes ''passed'' by their broadband enabled infrastructure; (3) collect demographic information about households from filers located in representative areas; and (4) collect price information from filers in representative areas or from filers more

generally. In addition, the *NPRM* invites comment whether there are any alternatives not discussed in the *NPRM* that would also serve the objectives of the *NPRM*. The Commission invites comment on ways to mitigate the burden that might be imposed on small entities by proposals discussed in the *NPRM*. The Commission also invites comment on alternatives to these proposals that would meet the objectives of the *NPRM* but would impose lesser burdens on small entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

58. From the outset, the *NPRM* invites comments on significant alternatives to improving data about broadband availability throughout the nation—particularly availability in rural and other hard-to-serve areas—that would impose no burden on small entities whatsoever. These alternatives ask whether the Commission would be able to meet its objectives by conducting further analysis of current data, conducting its own studies, or purchasing databases from other entities to supplement Commission data. The *NPRM* asks whether the Commission should simply identify for further, individual study those Zip Code areas where deployment appears to be particularly limited. The *NPRM* invites comment on whether the Commission might collaborate with state public-private economic development or other initiatives to supplement and refine Commission data. Furthermore, the *NPRM* invites comment whether it might purchase commercial databases or services that would provide data without imposing additional burdens on filers. Finally, the Commission inquires whether it might rely on a voluntary self-reporting system by non-served households, patterned after the National Do-Not-Call Registry, to identify localized areas where broadband services are not available. None of these alternatives would impose burdens on small entities, but commenters are invited to comment on whether these alternatives would provide sufficient information for the Commission to assess whether it should institute new policies to encourage deployment of broadband services to rural and hard-to-serve areas.

59. With regard to proposals that would increase the reporting requirements of small entities, the *NPRM* invites comments on how these proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services. As noted above, the *NPRM* invites comment on whether current Form 477 filers should (1) report numbers of subscribers per 5-digit Zip Code, (2) report 9-digit Zip Codes where there is at least one subscriber or report numbers of subscribers per 9-digit Zip Code, (3) report geocoded information about subscriber locations, or (4) report information that delineates in detail the boundaries of their broadband-enabled service territories. The *NPRM* also seeks comment on whether the Commission should (1) refine the speed-tier information the Commission currently collects by splitting an existing speed tier into two; (2) require all broadband filers to report the number of residential customers served and also the number of homes ''passed'' by their broadband enabled infrastructure; (3) collect demographic information about households from filers located in representative areas; and (4) collect price information from filers in representative areas or from filers more generally. To analyze the impact on small entities, the *NPRM* specifically asks whether entities maintain these types of information in billing or marketing databases and asks commenters to demonstrate the burden for the entities to collect and report this type of information. This information will assist the Commission in determining whether these various proposals would impose a significant economic impact on small entities. Commenters are invited to comment on whether there are alternative methods that would obtain the same information while lessening the economic impact on small entities.

60. The *NPRM* also invites comment on how we should modify the reporting requirements for wireless broadband providers and interconnected VoIP providers. Specifically, the *NPRM* invites comment on whether mobile wireless providers should (1) report the number of month-to-month (or longer term) subscriptions to broadband Internet access service designed for full Internet browsing; (2) report the number of month-to-month (or longer term) subscriptions for broadband-speed browsing of customized-for-mobile web sites; and (3) report the number of unique mobile voice service subscribers who are not month-to-month subscribers to an Internet access service, but who nevertheless made any news, video, or other entertainment downloads to the subscriber's handset at broadband speed during the month preceding the Form 477 reporting date. The *NPRM* also seeks comment on how to improve the reporting estimate of the percentage of mobile wireless broadband subscribers who are residential end users. In doing so, the *NPRM* specifically suggests and seeks comment on alternative methods for arriving at the best estimates of residential end users. Finally, the *NPRM* specifically invites comment on how to collect useful information about the number of interconnected VoIP subscribers in the least burdensome manner. This information will assist the Commission in determining whether these various proposals would impose a significant economic impact on small entities. Commenters are invited to comment on whether there are alternative methods that would obtain the same information while lessening the economic impact on small entities.

61. Based on these questions, and the alternatives discussed is the *NPRM*, the Commission anticipates that the record will be developed concerning alternative ways in which it could lessen the burden on small entities of obtaining improved data about broadband availability throughout the nation.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

62. None.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to Sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this *NPRM*, with all attachments, is adopted.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of

this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–9300 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006–26339]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Siemens VDO to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.'' The petition requests that the agency add a dynamic automatic suppression option under the advanced air bag options for the 12-month CRABI infant test dummy analogous to that for the 3-year and 6-year-old dummies.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: David Sutula, Office of Crashworthiness Standards, at (202) 366–3273. Fax: (202) 493–2739.

For legal issues: Edward Glancy, Office of Chief Counsel, at (202) 366–2992.

Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000, we published an interim final rule that amended FMVSS No. 208 to require advanced air bags (65 FR 30680; (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and static suppression tests using a range of dummy sizes and a number of specified child restraint systems (CRSs).

The Advanced Air Bag Rule allows for passenger side compliance through any of three options. The first option, Low Risk Deployment (LRD), defines a reduced deployment strength for occupants in close proximity to the air bag. The second option suppresses the air bag when a child is present. The third option, Dynamic Automatic Suppression (DASS), senses the location of an occupant with respect to the air bag, interprets the occupant characteristics and movement, and determines whether or not to allow the air bag to deploy. Performance tests for determining compliance with the LRD and suppression options were specified in the Advanced Air Bag Rule. A performance test for determining compliance with the DASS option was not specified in the rule because at that time it was not known what technologies would be used to attempt to meet the DASS option.

The agency received multiple petitions for reconsideration to the Advanced Air Bag Rule. Petitioners raised a large number of concerns about the various test procedures in their written submissions. The agency then addressed each petition in a **Federal Register** notice published on December 18, 2001, and made a number of refinements to the test dummy positioning procedures in the barrier tests and the low risk deployment tests used in the Advanced Air Bag Rule (66 FR 65376).

The December 18, 2001 response to petitions for reconsiderations (66 FR 65383) stated that:

> To address the risks posed by passenger air bags, the rule requires vehicles to either (1) have a passenger air bag that deploys in a low-risk manner to out-of-position occupants, (2) to have a feature that suppresses the air bag when a young child is present in a variety of positions, or (3) to have a feature that suppresses the air bag when a passenger is out-of-position (including in dynamic events). *The risk minimization requirements must be met separately for 1-year-old, 3-year-old and 6-year-old children, and manufacturers may choose different options for these three classes of occupants [emphasis added].*''

In making this statement, the agency clarified that for each dummy type, the selected ''risk minimization'' strategy had to be met in full for each dummy. That is, it was not acceptable to comply with only the suppression strategy for an infant in a rear facing child restraint system (RFCRS) and the low risk deployment strategy for an infant in a forward facing child restraint system (FFCRS). This was further emphasized in letters responding to request for interpretation from TRW Automotive (TRW) [1] and International Electronics and Engineering (IEE) [2] in July and October of 2003, respectively. The IEE interpretation also indicated that ''[m]anufacturers may not use suppression technology to ensure that there will be no air bag deployment in the indicant test if they are certifying to the low risk deployment test.''

In both regulatory and non-regulatory environments the agency has discussed extensively its concern about the danger of air bag deployment in the presence of an infant in a RFCRS. It was for this reason that the infant low risk deployment certification option effectively requires a broader range of crash severities for which the air bag must deploy in a low risk manner.

II. The Petition

On August 20, 2003, Siemens VDO (Siemens) petitioned the agency to amend FMVSS No. 208 to add a DASS option under the advanced air bag options for the 12-month-old CRABI infant test dummy. This would be an option analogous to that provided for the 3-year-old and 6-year-old dummies in S21.3 and S23.3, respectively. Siemens stated that ''including the DASS option with the 1-year-old (12-month-old) dummy could have a positive impact on motor vehicle safety by enabling the development and certification of advanced air bag suppression systems.''

The petition stated that the lack of a DASS option (for infants) is limiting advanced air bag technologies for the following reasons:

1. Using a vision-based DASS system it is not possible, under *all circumstances*, [emphasis added] to distinguish between a 12-month-old child in a FFCRS with a sunshield or blanket and a 5th percentile female. The system would suppress the air bag and eliminate potential benefits to children older than 1-year and small adults.

[1] Docket Management System NHTSA–2003–15650.

[2] Docket Management System NHTSA–2003–16296.

2. Test data Siemens submitted with the petition show that a 12-month-old properly positioned in a FFCRS is not at risk from a statically deploying air bag. In out-of-position (OOP) situations, the infant in the FFCRS does not have injury measures in excess of the required FMVSS No. 208 criteria.

3. A DASS option for the 12-month-old dummy would deactivate the air bag when the infant enters the air bag suppression zone. An infant in a rear facing child restraint system (RFCRS) would always be in this suppression zone.

Siemens believes that the agency has never expressed its reasoning for not allowing the DASS option for the 12-month-old dummy. The petitioner stated that if its petition were granted and the standard amended accordingly, it would submit a petition for a DASS test procedure in accordance with S27.1(a).

The petitioner's claimed need for the relief is predicated on the contention that their vision system cannot tell the difference between a 12-month-old in a FFCRS covered by a blanket or sunshield (a test required in the suppression option for the 12-month-old dummy) and a 5th percentile female sitting in the passenger seat. Since the air bag must not be suppressed for the 5th percentile female, their vision system alone could not be used for a compliance strategy that suppresses for the 12-month-old and uses DASS for all other occupants.

III. Data Submission and NHTSA Analysis

A. Data Submission

Siemens provided sled and static testing data in support of their petition. The petitioner's stated goal of the testing was to determine:

1. The risk of injury from air bag deployment for infants and children in FFCRS; and

2. If there is any benefit to air bag deployment for small children.

The petitioner's test matrix consisted mostly of sled testing using the 3-year-old dummy. Tests were conducted with the dummy unrestrained and also restrained using two different CRSs. The tests were done in three positions of vehicle seat adjustment: Forward track/highest height (for/up), middle track/middle height (mid/mid), and rearward track/lowest height (rear/low). The sled speeds were reported as 16, 22, and 35 mph. Siemens also reported that a 10 mph out-of-position test was performed, but no data was provided for this test. Finally, Siemens also reported static air bag deployments using a 12-month-old dummy and four different CRSs. The complete test matrix is shown below in Table 1.

TABLE 1.—TEST DATA SUBMITTED IN SUPPORT OF PETITION

Air bag status	w/out air bag	w/air bag					
	Seat position						
Dummy	mid/mid	for/up misuse	for/up	mid/mid	rear/low	for/mid	for/mid misuse
3-year-old × 2 CRSs.	35 mph	16† and 35 mph.	35 mph	35 mph	35 mph.		
3-year-old unbelted.	22 mph	10 mph OOP ..	.....	22 mph.			
12-month-old × 4 CRSs.	.....	.....	.....	.....	.....	Static*	Static‡.

† One child restraint.
* Both stages of a dual stage air bag.
‡ Current production single stage air bag.

B. Ex Parte Meeting With Siemens, Volkswagen and Audi

On June 17, 2004, representatives from Siemens and vehicle manufacturers, Volkswagen and Audi, met with NHTSA to discuss the Siemens petition. During the meeting, Siemens made a presentation reiterating the petition material.[3] No new supporting data was provided, but the following additional justifications for granting the petition were presented:

- Maximizes the number of occupants that benefit from air bag protection.
- Minimizes the risk of air bag-induced fatalities.
- Avoids weight-based classification grey zones through a position-dependent deployment decision.

[3] Test Requirements for 1 YO Dummy in Standard No. 208, Information supporting the Siemens VDO petition for rulemaking, Washington DC, June 17, 2004. See the docket for this notice for a copy of the meeting materials.

C. NHTSA Analysis

The petition requested that the agency allow a DASS option for the 12-month-old infant dummy. However, the dynamic test data submitted in support of the petition attempted to show the protective effect of the air bag for a belted 3-year-old dummy in two different CRSs and also unbelted, sitting in the vehicle seat. The agency does not consider this to be directly supportive of the petition in that a DASS option for the 3-year-old already exists.

The data submitted using the 12-month-old dummy were static first-stage air bag deployments. The dummy was placed in four different FFCRSs. In one set of data the CRS was in-position and in another it was leaning forward. The space between the instrument panel and dummy head was not provided with the petition. However, in the June 17, 2004 meeting with the petitioners, they stated that the distance was approximately 100–200 mm (4–8 inches). None of the dummy IARVs[4] were exceeded, but for at least one CRS tested, the injury measures were within 80 percent of the head, neck and chest criteria limits.

The data showed that at some dummy distance from the air bag, a first-stage air bag deployment might not exceed the injury threshold for the 12-month-old dummy. However, it does not demonstrate that air bags have a potential protective effect for a 12-month-old occupant dummy in a dynamic environment as claimed in the petition.

IV. Conclusion

The DASS option is intended to provide manufacturers the flexibility of deploying an air bag when such a deployment would not be harmful, and potentially beneficial, as opposed to suppressing the air bag or relying on a low risk deployment. However, central to the DASS option is that when an air

[4] Reference: S19 of FMVSS Standard No. 208.

bag is deployed, the risk of harm to an occupant is minimized. The petitioner has not provided such data, and instead presented dynamic test data using a 3-year-old test dummy. The agency's Special Crash Investigation data [5] indicate that the only fatalities for children younger than 2-years old in FFCRSs were in pre-advanced air bag systems without suppression and when they were improperly used. However, the Special Crash Investigation data does not prove that an air bag deployment for a properly restrained child in a FFCRS is not injurious. Although these fatalities might have been avoided through air bag suppression, it is not clear that a DASS system would provide comparable benefit to static suppression for a 12-month-old child.

Further, we believe that manufacturers will be able to, if they have not already done so, design DASS systems that can distinguish between the 5th percentile female test dummy and the 12-month-old test dummy in all positions required by the suppression option. Therefore, the requested relief is not necessary to implement a DASS compliance strategy for 3-year-old and 6-year-old test dummies and suppression for the 12-month-old dummy.

In accordance with 49 CFR part 552, this completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Dated: May 10, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–9382 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–59–P

[5] *http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/sci.html*

Notices

Federal Register
Vol. 72, No. 94
Wednesday, May 16, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 10, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Timber Purchasers' Cost and Sales Data.

OMB Control Number: 0596–0017.

Summary of Collection: The Multiple-Use Sustained Yield Act of 1960, the Forest Rangeland Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976, authorizes the Forest (FS) to sell forest products and National Forest System timber. FS timber appraisers develop advertised timber sale prices using a transaction evidence method of appraisal. Transaction evidence appraisals begin with an average of past successful bids by timber purchasers for timber for which the stumpage rate has been adjusted for the timber sale and the market conditions at the time. FS will collect cost data through the review of submissions by the timber purchasers both locally and nationally. There are no forms required for the collection of costs and timber sale data.

Need and Use of the Information: FS will collect information to verify the minimum rates returned a fair value to the Government and that the transaction system is a reliable approach to valuing timber. The information is also used to assure the accuracy of the transaction evidence system and to develop minimum stumpage rates for small sales or for areas where there is no current sale activity to use for transaction evidence. If the information is not collect, FS does not have a sound check to determine if the value being received from timber sales really reflects the timber's true value.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20.

Forest Service

Title: Annual Wildfire Summary Report.

OMB Control Number: 0596–0025.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (U.S.C. 2101) requires the Forest Service (FS) to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local fire fighting agencies. The FS works cooperatively with State and local fire fighting agencies to support their fire suppression efforts. FS will collect information using form FS 3100–8, Annual Wildfire Summary Report.

Need and Use of the Information: FS will collect information to determine if the Cooperative Fire Program funds, provided to the State and local fire fighting agencies have been used by State and local agencies to improve their fire suppression capabilities. The information collected will be shared with the public about the importance of the State and Private Cooperative Fire Program. FS would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program if the information provided on FS–3100–8, were not collected.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 56.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 28.

Forest Service

Title: 36 CFR Part 228, Subpart C—Disposal of Mineral Materials.

OMB Control Number: 0596–0081.

Summary of Collection: The Forest Service (FS) is responsible for overseeing the management of National Forest System land. The Multiple-Use Mining Act of 1955 (30 U.S.C. 601, 603, 611–615) gives the FS specific authority to manage the disposal of mineral materials mined from National Forest land. FS uses form FS–2800–9, ''Contract for the Sale of Mineral Materials'' to collect detailed information on the planned mining and disposal operations as well as a contract for the sale of mineral materials.

Need and Use of the Information: FS will use information collected from the public to ensure that environmental impacts of mineral material disposal are minimized. A review of the operating plan provides the authorized officer the opportunity to determine if the proposed operation is appropriate and consistent with all applicable land management laws and regulations. The information also provides the means of documenting planned operations and the terms and conditions that the FS

deems necessary to protect surface resources. If FS did not collect this information, a self-policing situation would exist.

Description of Respondents: Business or other for-profit.

Number of Respondents: 8,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 21,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–9387 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 11, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon.

OMB Control Number: 0581–0241.

Summary of Collection: Marketing Order No. 958 regulates the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon. The Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended, (7U.S.C. 601–674) authorizes the promulgation of marketing orders for certain agricultural commodities and the issuance of regulations thereof for the purpose of providing orderly marketing conditions in interstate and intrastate commerce and for improving returns to producers.

Need and Use of the Information: The Idaho-Eastern Onion Committee will use forms to collect information about the issuance of grade, size, quality, maturity, pack, container markings, shipping holidays, inspection and reporting requirements from individuals and firms who are involved in the production, handling and processing of onions grown in the production area. This information is necessary to effectively carry out the requirements of the Order, and fulfill the intent of the Act as expressed in the Order.

Description of Respondents: Business or other for-profit.

Number of Respondents: 55.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 359.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–9457 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0006]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Proposed Field Release of Rice Genetically Engineered To Express Lactoferrin, Lysozyme, or Serum Albumin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for confined field release of rice plants genetically engineered to express the human proteins lactoferrin, lysozyme, or serum albumin. After assessment of the application, review of pertinent scientific information, and consideration of comments provided by the public, we have concluded that these field releases will not present a risk of introducing or disseminating a plant pest. We have completed the environmental assessment and concluded that this field release will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for these field releases.

EFFECTIVE DATE: May 16, 2007.

ADDRESSES: You may read the environmental assessment (EA), the finding of no significant impact (FONSI), and any comments we received on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The EA, FONSI and decision notice, and responses to comments are available on the Internet at the following links:

- *http://www.aphis.usda.gov/brs/aphisdocs/06_27801r_ea.pdf*
- *http://www.aphis.usda.gov/brs/aphisdocs/06_27802r_ea.pdf*
- *http://www.aphis.usda.gov/brs/aphisdocs/06_28502r_ea.pdf*

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5531. To obtain copies of the EA, FONSI and decision notice, and response to comments, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is

reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On October 5, 2006, the Animal and Plant Health Inspection Service (APHIS) received two permit applications (06–278–01r and 06–278–02r) followed by a third permit application (06–285–02r) received on October 12, 2006, from Ventria Bioscience, Sacramento, CA, for confined field release of rice (*Oryza sativa*) plants genetically engineered to express genes coding for the proteins lactoferrin, lysozyme, or serum albumin, respectively. The proposed field releases are to be conducted in Geary County, KS. The subject plants have been genetically engineered, using techniques of micro-projectile bombardment or disarmed *Agrobacterium*-mediated transformation, to express proteins for recombinant human lactoferrin, lysozyme, or serum albumin. Expression of the genes is controlled by the rice glutelin 1 promoter (GT1), the rice glutelin 1 signal peptide (gt1), and the nopaline synthase (NOS) terminator sequence from *Agrobacterium tumefaciens*. The genes are expressed only in the seed. In addition, the plants may contain either or both of the coding sequences for the genes hygromycin phosphotransferase (*hpt*) or phosphinothricin acetyltransferase (*pat*), which are marker genes that allow for the selection of transgenic tissues in the laboratory using the antibiotic hygromycin and/or the herbicide bialaphos. Neither selectable marker gene is expressed in mature rice tissues, nor do they have any inherent plant pest characteristics or enhance gene transfer from plants to other organisms. The genetically engineered rice plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens.

The purpose of these field releases is for pure seed production and for the extraction of lactoferrin, lysozyme, and serum albumin for a variety of research and commercial products. There is currently no commercial rice production in Geary County or in any other location in the State of Kansas. The planting will be conducted using physical confinement measures. In addition, the protocols and field plot design, as well as the procedures for termination of the field plantings, are designed to ensure that none of the subject rice plants persist in the environment after the crop is harvested.

On February 28, 2007, APHIS published a notice [1] in the **Federal Register** (72 FR 8959–8960, Docket No. APHIS–2007–0006) announcing the availability of an environmental assessment (EA) for the proposed field release of rice genetically engineered to express lactoferrin, lysozyme, or serum albumin. During the designated 30-day comment period, which ended March 30, 2007, APHIS received 20,034 comments. Of the 20,034 comments received, 20,005 were opposed to APHIS' approval of these permits. Respondents opposing APHIS' approval of these permits were four public interest groups, academic professionals, organic food producers, rice growers, millers (or from related industries), and individuals. One public interest group submitted 13,289 nearly identical comments, and 5,621 nearly identical comments were submitted by another public interest group. There were 29 comments supporting APHIS' approval of these permits. Respondents supporting the approval of these permits were from academia, a farm bureau, a corn and grain sorghum growers association, a corporation, a State government agency, and individuals. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact (FONSI).

Pursuant to the regulations in 7 CFR part 340 promulgated under the Plant Protection Act, APHIS has determined that these field releases will not pose a risk of introducing or disseminating a plant pest. Additionally, based upon analysis described in the EA, APHIS has determined that the action proposed in Alternative 3 of the EA, issue the permit with supplemental permit conditions, will not have a significant impact on the quality of the human environment. You may read the FONSI and decision notice on the Internet or in the APHIS reading room (see **ADDRESSES** above). Copies may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI were prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of May, 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–9432 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, EA, and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2007–0006, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver Creek Allotment Management Plan on the Medicine Wheel/Paintrock Ranger Districts, Bighorn National Forest, Big Horn County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to update range management planning on fourteen (14) cattle/horse and sheep/goat grazing allotments in the Beaver Creek area, which will result in development of new allotment management plans (AMPs). The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments and input regarding the proposal were requested from the public, other groups and agencies, via a legal notice published in the Casper Star-Tribune on March 4, 2007. Additional comments may be made at the addresses below, and would be most helpful if submitted within thirty days of the publication of this notice. Based on the comments received and preliminary analysis, the Responsible Official has determined that an environmental impact statement will be prepared for this project. The draft environmental impact statement is expected in December, 2007 and the final environmental impact statement is expected April, 2007.

ADDRESSES: Send written comments and suggestions concerning this proposal to

Dave Sisk, District Ranger, Medicine Wheel/Paintrock Ranger District, Bighorn National Forest, 604 E. Main, Lovell, Wyoming 82431.

FOR FURTHER INFORMATION: Direct questions to Bernie Bornong, Interdisciplinary Team Leader, Bighorn National Forest, phone (307) 674–2600.

SUPPLEMENTARY INFORMATION: The allotments are located approximately 35 miles, by road, southeast of Lovell, Wyoming in the Bighorn River drainage. National Forest System lands within the Bighorn National Forest will be considered in the proposal. The purpose of the analysis is to determine if livestock grazing will continue on the analysis area. If the decision is to continue livestock grazing, then updated management strategies outlining how livestock will be grazed will be developed to assure implementation of Forest Plan management direction. The analysis will consider actions that continue to improve trends in vegetation, watershed conditions, and ecological sustainability relative to livestock grazing within the allotments. Management actions are proposed to be implemented beginning in the year 2009.

The Bighorn National Forest Land and Resource Management Plan (Forest Plan) identifies livestock grazing as an appropriate use and makes initial determinations for lands capable and suitable for grazing by domestic livestock.

The fourteen allotments involved are: Bear/Crystal Creek Sheep and Goat (S&G), Beaver Creek S&G, Finger Creek Cattle and Horse (C&H), Grouse Creek S&G, Hunt Mountain S&G, Matthews Ridge C&H, Red Canyon S&G, Red Canyon C&H, Sunlight Mesa C&H, South Park C&H, Whaley Creek S&G, Wiley Sundown C&H, Antelope Ridge S&G, and Little Horn S&G Allotments.

Purpose and Need for Action: The purpose of this project is to determine if livestock grazing will continue to be authorized on the fourteen allotments, and if it is to continue, how to best to utilize adaptive management strategies to maintain or achieve desired conditions and meet forest plan objectives. Livestock grazing is currently occurring on most of the allotments under the existing allotment management plan (AMP) and through direction provided in the Annual Operating Instructions. A few of the allotments are currently vacant. Continuation of livestock grazing will require reviewing existing management strategies and, if necessary, updating them to implement forest plan direction and meet Section 504 of Public Law 104–19 (Rescission Bill, signed 7/27/95). The results of this analysis may require modifying term grazing permits and AMPs. Modifications will be documented in updated AMPs for the allotments.

An additional purpose of this project is to maintain or move toward desired conditions for sagebrush/grassland communities; specifically, to maintain a mosaic of vegetation composition and structure that emulates, or moves toward, natural processes. The need to provide a mosaic of sagebrush cover densities has been identified in the project area.

Proposed Action: The proposed action is to continue livestock grazing using adaptive management strategies to meet or move toward Forest Plan and allotment-specific desired conditions. This includes changing livestock management strategies, constructing additional improvements (fences and water developments), and treating sagebrush.

Possible Alternatives: Two additional alternatives have been identified to date: (a) Remove livestock grazing from these allotments; and, (b) Continue current management strategies.

Responsible Official: Dave Sisk, District Ranger, Medicine Wheel/Paintrock Ranger District, Bighorn National Forest, 604 E. Main, Lovell, Wyoming 82431.

Nature of Decision to be Made: The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will determine whether or not to authorize livestock grazing on all, part, or none of the allotments, and if so, what adaptive management design criteria, adaptive options, and monitoring will be implemented so as to meet or move toward the desired conditions in the defined timeframe.

Scoping Process: Formal scoping for this project occurred in March 2007.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 4, 2007.

Dave Sisk,

Medicine Wheel/Paintrock District Ranger.

[FR Doc. E7–9386 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA17]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration, Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: This notice advises the public that an incidental take permit has been issued to the Grants Pass Irrigation District for the continued operation and maintenance of Savage Rapids Dam at Grants Pass, Oregon, and that the decision documents are available upon request.

DATES: Permit 1607 was issued on May 7, 2007, subject to certain conditions set forth therein, and took effect on May 7, 2007. The permit expires on November 1, 2009.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Habitat Conservation Division, NOAA's National Marine Fisheries Service, 2900 NW Stewart Parkway, Roseburg, OR 97470. The documents are also available on the Internet at *www.nwr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Ken Phippen, at phone number: (541) 957-3385, e-mail: *ken.phippen@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species:

Coho salmon (*Oncorhynchus kisutch*): threatened Southern Oregon and Northern California Coasts evolutionarily significant unit.

Dated: May 10, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9423 Filed 5–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA32

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by Dr. Pingguo He of the University of New Hampshire (UNH) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would enable researchers to test an experimental whiting net that uses wheeled ground gear by granting exemption from the requirement to use a raised footrope trawl. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 31, 2007.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *DA7–138@noaa.gov*. Include in the subject line ''Comments on wheeled whiting trawl EFP.''
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on wheeled whiting trawl EFP, DA7–138.''
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, 978–281–9341.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on May 2, 2007, by Dr. He of UNH and his industry partner Vincent Balzano, for a project funded under the Northeast Consortium. The primary goal of this study is to conduct feasibility and field testing of a trawl net equipped with a novel wheeled ground gear that may reduce the environmental impact on the seabed and reduce fuel consumption by the vessel.

The EFP would exempt one vessel from the requirement to use a raised footrope trawl net as specified at 50 CFR 648.80(a)(16) while conducting research trips in the Gulf of Maine (GOM) Grate Raised Footrope Trawl Whiting Exempted Fishery.

Initial testing of this gear will be conducted on a beach by towing the ground gear between two rented beach vehicles. During these trials, video recordings and photographs will be taken to evaluate the gear's rolling function and necessary initial adjustments and modifications will be made.

At sea research trips would be conducted over four days between July 1 and November 30, 2007. The experimental trawl net, with the exception of the ground gear, would conform to the requirements of this exempted fishery including a minimum 2.5–inch (6.35 cm) mesh size and a properly installed finfish excluder device. During trials, observations of the gear would be made with an underwater camera system and acoustic monitoring instruments would be used to measure net geometry.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–9376 Filed 5–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA29]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Vessel Monitoring Systems (VMS)/Enforcement Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, June 18, 2007, at 1 p.m.

ADDRESSES: The meeting will be held at the Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978)465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Introduction: safety, regulation compliance, and familiarizing industry with the proper use of VMS.
2. Presentation by NOAA's Office for Law Enforcement: the capabilities and limitations of VMS as an enforcement tool.
3. Comments and recommendations from the public, VMS users, state agencies and the Coast Guard. The committee has received the following requests:

a. Safe harbor protocol, to suspend a fishing trip due to storms or other emergencies;

b. Produce a laminated sheet of emergency contacts;

c. Declaration in/out of a fishery while at sea, rather than in port;

d. Change polling frequency, to be based on fishery declaration;

e. Closed area transit declaration, to minimize gear stowage requirements;

f. Completion of the days-at-sea (DAS) web page by NMFS;

g. Inform fishermen of existing safety features on their VMS units by vendors.

h. Examine polling outages, frequency and duration, by vendor.

i. Improve safety by consistently applying the minimum landing limit to once per 24 hours across all fisheries.

j. Develop an updated VMS program to eliminate inconsistent or duplicative regulations, and increase flexibility and improve administration of industry reporting requirements.

4. Industry and law enforcement dialog on VMS usage and how it can be improved.
5. Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–9373 Filed 5–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA30]

Fisheries of the South Atlantic; Southeastern Data, Assessment, and Review (SEDAR); greater amberjack; red snapper.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR Workshops for South Atlantic greater amberjack and red snapper.

SUMMARY: The SEDAR assessments of the South Atlantic stocks of greater amberjack and red snapper will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. This is the fifteenth SEDAR. See **SUPPLEMENTARY INFORMATION**.

DATES: The Data Workshop will take place July 9–13, 2007; the Assessment Workshop will take place October 22–26, 2007; the Review Workshop will take place January 28–February 1, 2008. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Data Workshop will be held at the Francis Marion Hotel, 387 King Street, Charleston, SC 29103; telephone: (843) 722–0600. The Assessment Workshop will be held at the Center for Coastal Fisheries and Habitat Research Beaufort Laboratory, 101 Piver's Island Road, Beaufort, NC 28516. The Review Workshop will be held at the Holiday Inn Brownstone, 1707 Hillsborough Street, Raleigh, NC 27605; telephone: (919) 828–0811.

FOR FURTHER INFORMATION CONTACT: John Carmichael, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 15 Workshop Schedule:

July 9–13, 2007; SEDAR 15 Data Workshop

July 9, 2007: 1 p.m. - 8 p.m.; July 3–12, 2007: 8 a.m. - 8 p.m.; July 13, 2007: 8 a.m. - 1 p.m.

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

October 22–26, 2007; SEDAR 15 Assessment Workshop

October 22, 2007: 1 p.m. - 8 p.m.; October 23–25, 2007: 8 a.m. - 8 p.m.; October 26, 2007: 8 a.m. - 1 p.m.

Using datasets provided by the Data Workshop, participants will develop population models to evaluate stock status, estimate population benchmarks and Sustainable Fisheries Act criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters. Participants will prepare a workshop report, compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to the review panel.

January 28–February 1, 2008; SEDAR 15 Review Workshop

January 28, 2008: 1 p.m. - 8 p.m.; January 29–31, 2008: 8 a.m. - 8 p.m.; February 1, 2008: 8 a.m. - 1 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **FOR FURTHER INFORMATION CONTACT**) at least 10 business days prior to each workshop.

Dated: May 11, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–9374 Filed 5–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA19]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research/enhancement permit (1610) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit from Thomas R. Payne and Associates, Arcata, California (Permit 1610). This permit would affect the Southern California (SC) steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS), Northern California (NC) steelhead DPS, Central California Coast (CCC) steelhead DPS, California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Population (ESU), Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) ESU, and CCC coho salmon ESU. This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Daylight Savings Time on June 15, 2007.

ADDRESSES: Written comments on this permit request should be sent to the office indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The application and related documents are available for review, by appointment at NMFS, 1655 Heindon Road, Arcata, CA 95521 (ph: 707–825–5185, fax: 707–825–4840).

FOR FURTHER INFORMATION CONTACT: Diane Ashton at phone number (707–825–5185), or e-mail: *diane.ashton@noaa.gov*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the endangered CCC coho salmon ESU, and the following threatened salmonid DPSs and ESUs: SC steelhead DPS, NC steelhead DPS, CCC steelhead DPS, CC Chinook salmon ESU, and SONCC coho salmon ESU.

Permit Request Received.

Permit 1610

Thomas Payne has requested a Permit (1610) for take of the above listed species associated with four studies. Study 1 (Ventura River Project) would assess the distribution and estimate the abundance of juvenile steelhead/rainbow trout, with a comparison to estimates from 2006, in the Ventura River and principal tributaries, Ventura County, California. Study 2 (Martin Slough Project) would assess the fish habitat quality of Martin Slough and to document the distribution and abundance of fish, including juvenile salmonids, in Martin Slough which flows into Swain Slough, a tributary to Elk River which flows into Humboldt Bay, Humboldt County, California . Study 3 (Russian River Project) would assess the fish habitat quality and fish distribution, including juvenile salmonids, in two tributaries of the upper Russian River basin near Ukiah, Mendocino County, California. Study 4 (PALCO Marsh Project) would assess the fish populations in PALCO Marsh and tidal channels to Humboldt Bay, Humboldt County, California.

Permit 1610, if issued, would expire September, 2017.

Dated: May 10, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9422 Filed 5–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of the Programmatic Environmental Impact Statement (PEIS) for the Growth of the United States Army

AGENCY: Department of the Army, DOD

ACTION: Notice of intent.

SUMMARY: The President of the United States has directed the growth of the United States Army. In an unpredictable and rapidly changing global security environment, this directive is designed to ensure the Nation has the ground forces necessary to meet its strategic security and defense needs. These needs, as outlined in the National Security Strategy, include the disruption of terrorist networks, the prevention of nuclear proliferation, the support of peace and regional stability, the denial of rogue Nation support to terrorist organizations, and the promotion and advancement of democratic forms of government. The President has determined that the implementation of these security goals in the 21st century will require increased numbers of U.S. Army forces to sustain the military operaitons required to support these objectives. The Army, therefore, intends to prepare a PEIS to analyze alternatives for executing the Presidentially directed growth required to support the defense and security missions of the Nation in the 21st century.

The Presidential decision directs the Army to add 74,200 active and reserve component Soldiers to its total end strength. This growth includes the addition of six Brigade Combat Teams (BCTs) and the combat support (CS) and combat service support (CSS) units required to support them. In addition, the growth of the force will include ''right sizing'' or rebalancing the Army force structure to add increaed numbers of high demand critical skills which have been identified as shortfalls. Military skills, such as military police, engineers, and explosive ordnance detachments, must be added to the force in greater numbers to meet the increased needs for these types of units in operational theaters abroad. Rebalancing of the Army's force is needed to ensure the Army has the proper capabilities to sustain operations for promoting global and national security now and into the foreseeable future.

In addition to this growth, the Army recognizes the need to continue with initiatives to restructure its forces to implement the standard modular unit configurations directed by the Quadrennial Defense Review (QDR) in 2001 and 2006. Modularity is a critical component of Army Transformation and the Army continues to implement the QDR directive to standardize its units and their force structure. This standardization of Army force structure will continue to improve management and generate increased operational efficiencies within the Army. Stationing actions supporting modularity will be evaluated and considered in conjunction with stationing actions required to support Army growth.

The PEIS will assess the environmental capacity of the Army's installations to accommodate different types and combinations of new units as part of the growth and restructuring. The PEIS will examine the potential environmental and socioeconomic impacts at installations resulting from various combinations of new unit stationing actions. These stationing actions could include additional CS or CSS units, the addition of different types of modular BCTs, or combinations of these actions at a given stationing location. Under the Army's modularity initiative, which standardizes BCT force structure, there are three types of maneuver BCTs that will be discussed in the PEIS. These include the infantry BCT which consists of approximately 3,500 Soldiers; the Stryker BCT which consists of approximately 4,000 Soldiers; and the heavy BCT which consists of approximately 3,800 Soldiers. Potential impacts resulting from stationing actions of new CS and CSS units and these maneuver BCTs will be discussed and assessed at installation locations that have potential to support the growth and restructuring of the Army. The PEIS will analyze the proposed action's impacts upon the natural, cultural, and man-made environments at those stationing locations best able to meet the needs of the Army and its Soldiers and Families.

The Army intends to analyze the following alternatives in the PEIS: (1) Grow and restructure the Army by permanently stationing new units at existing Army installations within the United States and retaining some units at overseas installations outside of the continental United States that were originally scheduled to return to the United States; (2) Grow and restructure the Army by permanently stationing units at existing stationing locations within the United States. As part of this alternative, overseas installations would be used to temporarily accommodate a portion of Army growth while permanent facilities were constructed at existing Army installations within the United States; and (3) Grow and restructure the Army by permanently stationing new units at new and existing Army stationing locations within the United States. This alternative would include the construction of permanent party facilities at locations where the Army owns land but does not currently station permanent party personnel. As part of this alternative, overseas installations would be used to temporarily accommodate a portion of Army growth while permanent facilities were constructed within the United States.

In addition to the above alternatives, the no-action alternatives will be considered and used as a baseline for comparison of alternatives. The no-action alternative is to retain the U.S. Army at its current and strength and force structure. The no-action alternative includes those realignments and stationing actions directed by Base Realignment and Closure legislation in 2005, Army Global Defense Posture Realignment, and Army Modular Forces initiatives. The no-action alternative serves as a baseline for the comparison only and is not a viable means for meeting the current and future strategic security and defense requirements of the Nation.

Viable alternative stationing locations considered in this analysis for the growth of the Army are those installations that are best able to meet Army unit requirements for training ranges and maneuver space, housing and office space, maintenance and vehicle parking, and Soldier and Family quality of life (e.g., schools, gyms, medical facilities, reducing family disruption). The proposed action will require the Army to balance strategic, sustainment, and environmental considerations with evolving world conditions and threats to national defense and security.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. DiMichele, Public Affairs Officer, U.S. Army Environmental Command, Aberdeen Proving Ground, MD 21010; phone (410) 436–2556.

SUPPLEMENTARY INFORMATION: The global security environment is turbulent, unpredictable, and rapidly changing. It has placed considerable demands on the Nation's military, and highlighted the need for the Army to correct shortfalls in high demand skills while reassessing its force capability. No one has felt the impacts of the recent demands of the modern security environmental more than Soldiers and their Families. To meet the challenges of the wider range of security threats present in the 21st century the Army requires the growth

and restructuring of its forces in order to sustain the broad range of operations required for national and global stability.

The PEIS is being prepared to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and meet Army NEPA procedures, which are outlined in Environmental Analysis of Army Actions (32 CFR part 651). These regulations require the Army to consider the environmental impacts of its proposed action and alternatives and to solicit the views of the public so it can make an informed final decision regarding how to proceed.

Proposed alternatives to grow the Army could involve three primary action depending on the installation being analyzed. These actions include the construction of housing and quality of life facilities (i.e., schools, gymnasiums, hospitals), the construction of new training ranges and infrastructure, and changes in the intensity of use of maneuver land and firing ranges associated with the increased frequency of training events. Evaluations will include strategic military and national security considerations for new stationing actions at locations which, if selected, are capable of supporting the National Security Strategy (2006), the QDR (2006), National Military Strategy, and the Army Campaign Plan. These strategic guidance documents have been incorporated into the Army's decision-making process. All of these individual components will be considered in the Army's PEIS for growth of the force in order to ensure a range of reasonable alternatives are carried forward which support the Nation's security requirements.

Based on public scoping and the factors discussed above, the Army will refine its range of reasonable alternatives to the extent possible to accommodate both mission requirements and quality of life considerations. In reaching its decision, the Army will assess and consider public concerns. The PEIS compares the direct, indirect, and cumulative environmental effects that may result from stationing actions connected with initiatives to grow the Army. The primary environmental issues to be analyzed will include those identified as the result of the scoping process and installation-specific considerations. These issues may include impacts to soil, water and air quality, airspace conflicts, natural and cultural resources, land use compatibility, noise, socioeconomics, environmental justice, energy use, human health and safety considerations, and infrastructure and range/training requirements.

Scoping and Public Comment: All interested members of the public, federally-recognized Indian Tribes, Native Alaskans, Native Hawaiian groups, federal, state, and local agencies are invited to participate in the scoping process for the preparation of the PEIS. Written comments identifying environmental issues, concerns and opportunities to be analyzed in the PEIS will be accepted for 30 days following publication of this Notice of Intent in the **Federal Register.** Comments may be sent to Mr. Robert E. DiMichele at the above address.

Dated: May 11, 2007.

Addison D. Davis,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health).

[FR Doc. 07–2405 Filed 5–15–07; 8:45am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 15, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 10, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Pell Grant, ACG, and National SMART Reporting under the Common Origination and Disbursement (COD) System.

Frequency: As needed.

Affected Public:

Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,655,000.
Burden Hours: 494,950.

Abstract: The Federal Pell Grant, ACG, and National SMART Programs are student financial assistance programs authorized under the Higher Education Act of 1965 (HEA), as amended. These programs provide grant assistance to an eligible student attending an institution of higher education. The institution determines the student's award and disburses program funds to the student on behalf of the Department (ED). To account for the funds disbursed, institutions report student payment information to ED electronically. COD is a simplified process for requesting, reporting, and reconciling Pell Grant, ACG, and National SMART funds.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and

by clicking on link number 3290. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–9389 Filed 5–15–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–21–000]

Attala Transmission LLC; Notice of Filing

May 9, 2007.

Take notice that on April 25, 2007, Attala Transmission LLC filed a letter to inform the Commission that it will not file revisions to its pro forma Open Access Transmission Tariff (OATT) because it has been granted a waiver of the requirement to file a OATT until it receives a request for service from an entity other than Entergy Mississippi, Inc., pursuant to Commission's Order No. 890.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time May 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9355 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–444–000]

Caledonia Energy Partners, L.L.C. Notice of Proposed Changes in FERC Gas Tariff

May 9, 2007.

Take notice that on May 7, 2007, Caledonia Energy Partners, L.L.C. (Caledonia) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 7, 2007:

First Revised Sheet No. 19.
Original Sheet No. 19A.
First Revised Sheet No. 24.
First Revised Sheet No. 50.
Original Sheet No. 50A.
First Revised Sheet No. 70.

Caledonia states that the purpose of this filing is to submit substitute tariff sheets that will implement changes to its effective FERC Gas Tariff which Caledonia initially proposed to make to the pro forma tariff that was incorporated into its application for a certificate of public convenience and necessity under section 7 of the Natural Gas Act. Because Caledonia has commenced operations pursuant to Commission authorization, it now has an effective tariff. Consequently, Caledonia believes that any changes should be proposed to that tariff rather than the pro forma tariff. Caledonia proposes June 7, 2007 as the effective date of its proposed tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9361 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–15–006]

Caledonia Energy Partners, L.L.C.; Notice of Compliance Filing

May 9, 2007.

Take notice that on May 2, 2007, Caledonia Energy Partners, L.L.C.

(Caledonia) submitted a filing to comply with the April 27, 2007 order of the Director, Division of Tariffs and Market Development—East of the Federal Energy Regulatory Commission in Docket No. CP05–15–003.

Caledonia states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on May 23, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9362 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS07–4–000]

Central Vermont Public Service Corporation; Notice of Filing

May 8, 2007.

Take notice that on April 25, 2007, Central Vermont Public Service Corporation filed an application for partial exemption from the standards of conduct pursuant to Order No. 2004, 105 FERC 61,248 (2003), and sections 358.1(d), 358.2(a), 358.4(a) and (c) and 358.5(a) and (b) of the Federal Energy Regulatory Commission's Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 25, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9316 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–438–000]

Distrigas of Massachusetts LLC; Notice of Tariff Filing

May 8, 2007.

Take notice that on May 1, 2007, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Third Revised Sheet No. 94 and Fourth Revised Sheet No. 94A, to become effective as of June 1, 2007.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's Index of Customers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9318 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–1–001]

East Kentucky Power Cooperative, Inc.; Notice of Compliance Filing

May 8, 2007.

Take notice that on April 27, 2007, East Kentucky Power Cooperative, Inc. filed tariff modifications to its open access transmission tariff, pursuant to the Commission's March 28, 2007 order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 18, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9317 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–443–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 9, 2007.

Take notice that on May 4, 2007, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheets, to be effective on July 1, 2007:

First Revised Sheet No. 50C.
Fourth Revised Sheet No. 68.
First Revised Sheet No. 69.
Third Revised Sheet No. 70.
Original Sheet No. 70A.
Original Sheet No. 70B.

On May 4, 2007, Iroquois tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets designed to revise its gas quality specifications. The proposed revisions were developed in consultation with Iroquois' customers and prospective suppliers of natural gas and are consistent with the Commission's Policy Statement issued June 15, 2006 in Docket No. PL04–3.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9360 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–441–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

May 8, 2007.

Take notice that on May 3, 2007, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, the following tariff sheets, to be effective June 3, 2007:

Fourth Revised Sheet No. 2
Second Revised Sheet No. 34
Original Sheet No. 34A
Fifth Revised Sheet No. 37
Second Revised sheet No. 37A
Original sheet no. 37B

KMIGT states that the purpose of this filing is to permit KMIGT to negotiate contractual right of first refusal (ROFR) and rollover provisions under Section 18 of the General Terms and Conditions of KMIGT's tariff on a nondiscriminatory basis, consistent with current Commission policy.

KMIGT further states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9319 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–357–001 and CP05–92–004]

Liberty Gas Storage, LLC; Notice of Compliance Filing

May 9, 2007.

Take notice that on May 7, 2007, Liberty Gas Storage LLC (Liberty) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 149
First Revised Sheet No. 154
First Revised Sheet No. 155

Liberty states that the purpose of the filing is to comply with an order issued by the Commission on April 13, 2007 in the above-referenced dockets.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9358 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–312–002]

Mississippi Canyon Gas Pipeline, LLC; Notice of Supplemental Filing

May 9, 2007.

Take notice that on April 19, 2007, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing a letter in the captioned docket. Mississippi Canyon states that it satisfies the Commission's condition regarding existing similarly situated Rate Schedule FT–2 shippers, as required in its April 3, 2007 letter order. Mississippi Canyon also states that it will offer the same discounted rate for similarly situated new shippers under the same rate schedule.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 17, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9357 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–065]

Northern Natural Gas Company; Notice of Tariff Filing And Negotiated Rates

May 9, 2007.

Take notice that on April 30, 2007, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2007:

41 Revised Sheet No. 66A
Tenth Revised Sheet No. 66B
Second Revised Sheet No. 66B.01
Original Sheet No. 66B.02

Northern states that the tariff sheets are being filed to implement two separate negotiated rate transactions with Northern States Power—Minnesota and Great River Energy, respectively, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9352 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–408–000]

Northern Natural Gas Company; Notice of Request for Waiver

May 9, 2007.

Take notice that on April 27, 2007, Northern Natural Gas Company (Northern) tendered for filing a request for waiver of Commission's regulations to allow a permanent capacity release to be effective on June 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time May 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9359 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–20–000]

Perryville Energy Partners, L.L.C.; Notice of Filing

May 9, 2007.

Take notice that on April 25, 2007, Perryville Energy Partners, L.L.C. filed a letter to inform the Commission that it will not file revisions to its pro forma Open Access Transmission Tariff (OATT) because it has been granted a waiver of the requirement to file a OATT until it receives a request for service from an entity other than Entergy Louisiana, pursuant to Commission's Order No. 890.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9354 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–236–009 and EL04–121–004]

PJM Interconnection, L.L.C.; Notice of Filing

May 8, 2007.

Take notice that on April 27, 2007, PJM Interconnection, L.L.C. filed its Market Monitor's 2006 State of the Market Report, pursuant to Article VI of the settlement agreement filed on November 16, 2005 and approved by the Commission January 27, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 18, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9321 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–191–000; CP07–192–000]

Port Dolphin Energy LLC; Notice of Application

May 9, 2007.

Take notice that on April 25, 2007, Port Dolphin Energy LLC (Port Dolphin), 12727 Featherwood, Suite 113, Houston, Texas 77034, filed in Docket Nos. CP07–191–000 and CP07–192–000 an application, pursuant to section 7(c) of the Natural Gas Act and Part 157, Subpart A of the Commission's regulations, for: (1) a certificate of public convenience and necessity authorizing Port Dolphin to construct, install, own, operate, and maintain a single-use, 5.8-mile natural gas pipeline and related facilities necessary to provide transportation from the proposed Port Dolphin Project, a deepwater port offshore of Tampa Bay, Florida, to interconnections with Gulfstream Natural Gas System, L.L.C. (Gulfstream) and TECO Energy, Inc. (TECO), with applicable waivers; and (2) a blanket construction certificate pursuant to Subpart F of Part 157 of the Commission's regulations. The application is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3767 or TYY, (202) 502–8659.

The Port Dolphin Pipeline will be a proprietary, single-use pipeline dedicated solely to transporting re-gasified LNG from the Port Dolphin Project with a capacity up to 1,200 million standard cubic feet per day (MMscf/d). Port Dolphin states that it will operate the Port Dolphin port as a proprietary LNG receiving and re-gasification facility pursuant to the Deepwater Port Act of 1974. Accordingly, Port Dolphin filed an application to construct and operate the offshore portions of the Port Dolphin Project with the Maritime Administration and the U.S. Coast Guard (USCG) on March 29, 2007.

The USCG will serve as the lead agency responsible for developing and issuing an Environmental Impact Statement (EIS) for both the deepwater port and the associated onshore pipeline and related facilities referenced in this Notice. The FERC will act as a cooperating agency in developing the EIS. The filing of the final EIS in the Commission's public record for this proceeding will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the final EIS.

Any questions regarding this application should be directed to Ragnar Wisloff or Jeff Oetting, Port Dolphin Energy LLC, 12727 Featherwood, Suite 113, Houston, Texas 77034, phone (281) 922–1822.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before March 25, 2004, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9353 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–442–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

May 8, 2007.

Take notice that on May 3, 2007, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Eighth Revised Sheet No. 1, to become effective June 4, 2007.

WIC states that this tariff sheet is being filed to remove two contracts from the listing of non-conforming agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9320 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 9, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–52–000.

Applicants: Goat Mountain Wind, LP.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Goat Mountain Wind, LP.

Filed Date: 05/07/2007.

Accession Number: 20070507–5067.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 29, 2007.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER91–505–008; EL92–18–005.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company's Changes to Rate Schedule 143 in Compliance with April 6, 2007 Order.

Filed Date: 05/07/2007.

Accession Number: 20070507–5024.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 29, 2007.

Docket Numbers: FR04–157–020.

Applicants: Central Maine Power Company; Bangor Hydro-Electric Company.

Description: Central Maine Power Company Regional Refund Report pursuant to Commission's 10/31/06 Order.

Filed Date: 05/08/2007.

Accession Number: 20070507–5107.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 29, 2007.

Docket Numbers: ER06–1455–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits a revised Participation Power Agreement with Mid-Kansas Electric Company, LLC in compliance with FERC's letter order issued on 12/7/06.

Filed Date: 05/03/2007.

Accession Number: 20070507–0231.

Comment Date: 5 p.m. Eastern Time on Thursday, May 24, 2007.

Docket Numbers: ER07–404–002.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits a redline and clean version of Substitute Original Service Agreement 253 with an effective dated of 3/2/07.

Filed Date: 05/04/2007.

Accession Number: 20070507–0232.

Comment Date: 5 p.m. Eastern Time on Friday, May 25, 2007.

Docket Numbers: ER07–835–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation dba Progress Energy Florida, Inc submits its annual cost factor updates that implement the contractually authorized changes in certain cost components for interchange services.

Filed Date: 05/02/2007.

Accession Number: 20070504–0225.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: ER07–838–000; ER07–839–000; ER07–840–000; ER07–841–000; ER07–842–000; ER07–843–000; ER07–844–000; ER07–845–000; ER07–846–000; ER07–847–000; ER07–848–000; ER07–849–000; ER07–850–000; ER07–851–000; ER07–852–000; ER07–853–000; ER07–854–000; ER07–855–000; ER07–856–000; ER07–857–000; ER07–858–000.

Applicants: Bridgeport Energy, LLC; Casco Bay Energy Company, LLC; Griffith Energy LLC; Dynegy Arlington Valley, LLC; Dynegy Kendall Energy, LLC; Dynegy Mohave, LLC; Dynegy Morro Bay, LLC; Dynegy Moss Landing, LLC; Dynegy Oakland, LLC; Dynegy South Bay, LLC; Ontelaunee Power Operating Company, LLC; Dynegy Danskammer, L.L.C.; Dynegy Midwest Generation, Inc.; Dynegy Power Marketing, Inc.; Dynegy Roseton, L.L.C.; Renaissance Power, L.L.C.; Riverside Generating Company, L.L.C.; Rocky Road Power, LLC; Rolling Hills Generating, L.L.C.; Sithe/Independence Power Partners, L.P.; Sithe Energy Marketing, L.P.

Description: Bridgeport Energy, LLC et al submits notices of succession and revised market-based rate tariffs (Attachments B–1 through B–13) etc for the Dynegy Entities.

Filed Date: 05/02/2007.

Accession Number: 20070507–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: ER07–859–000.

Applicants: Orion Power MidWest, LP.

Description: Orion Power Midwest LP submits its Notice of Cancellation of the Cost of Service Recovery Tariff.

Filed Date: 05/04/2007.

Accession Number: 20070507–0233.

Comment Date: 5 p.m. Eastern Time on Friday, May 25, 2007.

Docket Numbers: ER07–860–000.

Applicants: Aquila Merchant Services, Inc.

Description: Aquila Merchant Services Inc submits a Notice of Cancellation of its Second Revised Sheet 1 et al to FERC Electric Tariff, First Revised Volume 1.

Filed Date: 05/04/2007.

Accession Number: 20070507–0234.

Comment Date: 5 p.m. Eastern Time on Friday, May 25, 2007.

Docket Numbers: ER07–861–000.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corporation submits a petition requesting FERC to extend the term of the Settlement through 12/31/10.

Filed Date: 05/04/2007.

Accession Number: 20070507–0235.

Comment Date: 5 p.m. Eastern Time on Friday, May 25, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–50–000.

Applicants: TransCanada Energy Ltd.

Description: TransCanada Energy, Ltd submits notice of self-certification of Foreign Utility Company Status.

Filed Date: 05/02/2007.

Accession Number: 20070508–0004.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9333 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4784–074]

DaimlerChrysler Financial Services Americas LLC, Teton Power Funding, LLC and Topsham Hydro Partners Limited Partnership Topsham Hydroelectric Generating Facility Trust No. 1; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 9, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial Transfer of License.

b. *Project No.:* 4784–074.

c. *Date Filed:* April 26, 2007.

d. *Applicants:* DaimlerChrysler Financial Services Americas LLC, Teton Power Funding, LLC, and Topsham Hydro Partners Limited Partnership (Transferor) and Topsham Hydroelectric Generating Facility Trust No. 1 (Transferee).

e. *Name and Location of Project:* The Pejepscot Project is located on the Androscoggin River, in Sagadahoc, Cumberland, and Androscoggin Counties, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Transferor: DaimlerChrysler Financial Services Americas LLC, 27777 Inkster Road, Farmington Hills, MI 48334–5326, Attn: Marco DeSanto, Esq., (248) 427–2590. For Transferee: Topsham Hydroelectric Generating Facility Trust No. 1, c/o U.S. Bank, National Association, 300 Delaware Avenue, 9th Floor, Wilmington, DE 19801, Attn: Nicole Poole, (302) 576–3704.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* May 23, 2007.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001 (a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–4784–074) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under section 8 of the Federal Power Act, of a transfer of license for the Pejepscot Project No. 4784 from DaimlerChrysler Financial Services Americas LLC to Topsham Hydroelectric Generating Facility Trust No. 1.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the project number excluding the last three digits (P–4784) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be assumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9356 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice

May 10, 2007.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: Thursday, May 17, 2007, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Opens.

MATTERS TO BE CONSIDERED: Agenda.

***Note:** Items listed on the agenda may be deleted without further notice

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Electric	
E–1	ER07–478–000	Midwest Independent Transmission System Operator, Inc.
E–2	OMITTED.	

Item No.	Docket No.	Company
E–3	OMITTED.	
E–4	EL06–94–001	*Borough of Chambersburg, PA and Town of Front Royal, VA.* v. *PJM Interconnection, L.L.C.*
E–5	ER06–1218–000	PJM Interconnection, L.L.C.
	ER06–1218–001	
	ER06–1218–002	
	ER06–1218–003	
	ER06–1218–004	
E–6	OMITTED.	
E–7	OMITTED.	
E–8	RR07–9–000	North American Electric Reliability Corporation.
	RR07–10–000	
E–9	ER07–205–000	Ameren Energy Marketing, Central Illinois Public Service Company, Central Illinois Light Company, Illinois Power Company and Union Electric Company.
	ER07–205–001	
E–10	ER07–648–000	California Independent System Operator Corporation
E–11	ER07–655–000	ISO New England Inc.
E–12	QM07–2–000	Duke Energy Shared Services, Inc., Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.
E–13	EC07–53–000	Boston Generating, LLC, Mystic I, LLC, Mystic Development, LLC, Fore River Development, LLC and EBG Holdings, LLC.
E–14	ER01–3001–016	New York Independent System Operator, Inc.
	ER03–647–009	
E–15	NJ05–1–001	Western Area Power Administration
E–16	ER07–231–001	PJM Interconnection, L.L.C., New York System Operator, Inc., and ISO New England Inc.
E–17	EL03–37–005	*Town of Norwood, Massachusetts* v. *National Grid USA, New England Electric System, Massachusetts Electric Company, and Narragansett Electric Light Company.*
E–18	RM07–11–000	Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities.
E–19	OMITTED.	
E–20	OMITTED.	
E–21	OMITTED.	
E–22	OMITTED.	
E–23	ER03–563–030	Devon Power LLC.
	ER03–563–060	
E–24	EL06–83–000	Southwest Power Pool, Inc.
E–25	EL00–95–000	*San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services.*
	EL00–98–000	Investigation of Practices of the California Independent System Operator and the California Power Exchange.
	EL01–10–000	*Puget Sound Energy, Inc.* v. *Sellers of Energy and/or Capacity.*
	EL03–165–000	Portland General Electric Company.
	IN03–10–000	Investigation of Anomalous Bidding Behavior and Practices in Western Markets.
	PA02–2–000	Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices.
E–26	ER07–284–000	San Diego Gas & Electric Company
	ER07–284–001	
	ER07–284–002	
E–27	ER05–560–001	Midwest Independent Transmission System Operator, Inc.
	ER05–560–002	
E–28	EL00–95–000	*San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services.*
	EL00–98–000	Investigation of Practices of the California Independent System Operator and the California Power Exchange.
	EL02–113–000	El Paso Electric Company, Enron Power Marketing, Inc., and Enron Capital and Trade Resources Corporation.
	EL02–114–007	Portland General Electric Company.
	EL02–115–008	Enron Power Marketing, Inc.
	EL03–154–000	Enron Power Marketing, Inc. and Enron Energy Services, Inc.
	EL03–180–000	
	IN03–10–000	Investigation of Anomalous Bidding Behavior and Practices in Western Markets.
	PA02–2–000	Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices.
E–29	EL04–123–002	Entergy Services Inc.
	EL05–105–000	
	EL05–105–001	
	ER91–569–026	
E–30	OMITTED.	
E–31	EL06–88–001	*Dominion Nuclear Connecticut, Inc.* v. *Connecticut Light and Power Company.*
E–32	ER07–116–000	ISO New England Inc.
	ER07–116–001	
E–33	ER06–1552–001	Midwest Independent Transmission System Operator, Inc.
E–34	EL07–15–000	*Ontelaunee Power Operating Company, LLC* v. *Metropolitan Edison Company.*
E–35	EL06–69–000	*ALLETE, Inc. (d/b/a Minnesota Power)* v. *Midwest Independent Transmission System Operator, Inc.*
E–36	ER06–1552–002	Midwest Independent Transmission System Operator, Inc.
E–37	ER03–765–002	Calpine Oneta Power, L.P.
	ER03–765–003	
E–38	OMITTED.	
E–39	OMITTED.	

Item No.	Docket No.	Company
E–40	EL04–99–000	*Mississippi Delta Energy Agency and Clarksdale Public Utilities Commission* v. *Entergy Services, Inc. and Entergy Operating Companies.*
E–41	EL07–20–000	*Leadore Wind Farm* v. *PacifiCorp.*
	Gas	
G–1	PR07–5–000	Cranberry Pipeline Corporation.
G–2	OMITTED.	
	Hydro	
H–1	P–1893–042	Public Service Company of New Hampshire.
H–2	P–1494–310	Grand River Dam Authority.
H–3	P–9042–069	Gallia Hydro Partners.
H–4	EL06–91–001	*Fourth Branch Associates (Mechanicville)* v. *Hudson River-Black River Regulating District.*
	P–12252–024	Hudson River-Black River Regulating District.
H–5	P–12574–001	Santiam Water Control District.
	Certificates	
C–1	CP07–44–000	Southeast Supply Header, LLC and Southern Natural Gas Company.
	CP07–45–000	Southeast Supply Header, LLC.
	CP07–46–000	
	CP07–47–000	
C–2	CP06–85–002	CenterPoint Energy Gas Transmission Company.
	CP07–41–000	
C–3	CP07–70–000	Southern Natural Gas Company.
C–4	RM06–12–001	Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities.
C–5	CP98–150–009	Millennium Pipeline Company, L.L.C.
	CP02–31–003	Iroquois Gas Transmission System, L.P.
	CP06–5–004	Empire State Pipeline and Empire Pipeline, Inc.
	CP06–6–003	
	CP06–7–003	
	CP06–76–001	Algonquin Gas Transmission, LLC.

Kimberly D. Bose,

Secretary.

A free Web cast of this event is available through *http:www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E7–9458 Filed 5–15–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8315–5]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by the New Jersey Department of Environmental Protection (''NJDEP''): *NJDEP* v. *Johnson*, No. 07–0612 (D. N.J.). On July 21, 2006, NJDEP filed a deadline suit to compel the Administrator to respond to a petition seeking EPA's objection to the issuance of a revised CAA Title V operating permit to Reliant Energy Mid-Atlantic Power Holdings LLC for its Portland Generating Station in Pennsylvania. Under the terms of the proposed settlement agreement, EPA has agreed to respond to NJDEP's petition by June 20, 2007.

DATES: Written comments on the proposed consent decree must be received by *June 15, 2007.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC–2007–0413, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1222; fax number (202) 564–5603; e-mail address: *orlin.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

NJDEP submitted a petition to the Administrator of the Environmental Protection Agency pursuant to CAA section 505(b)(2), requesting that he object to issuance of a Title V operating permit to Reliant Energy Mid-Atlantic Power Holdings LLC for its Portland Generating Station in Pennsylvania. Under the terms of the proposed settlement agreement, EPA shall grant or deny NJDEP's petition no later than June 20, 2007, and NJDEP shall dismiss its complaint with prejudice. The Court will retain jurisdiction to resolve any claim for the costs of litigation (including attorneys' fees).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the settlement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement.

A. How Can I Get a Copy of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0413) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 11, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–9417 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0319; FRL–8129–9]

Exposure Modeling Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Exposure Modeling Public Meeting (EMPM) will be held for one day on June 12, 2007. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on June 12, 2007 from 9 a.m. to 3 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Building), 1st Floor South Conference Room, 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Greg Orrick, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6140; fax number: (703) 305-6309; e-mail address: *orrick.greg@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0319. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

On a triannual interval, an Exposure Modeling Public Meeting will be held for presentation and discussion of current issues in modeling pesticide fate, transport, and exposure in support of risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the ''empmlist'' forum on the LYRIS list server at: *https://lists.epa.gov/read/all_forums/*.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2007–0319, must be received on or before May 31, 2007.

IV. Tentative Agenda

9 a.m. Welcome, Introductions, and Brief Updates

9:30 a.m. Model Review and Scenario Development for Urban Pesticide Runoff Model (Scott Jackson, CLA; Mark Cheplick, Amy Ritter and Marty Williams, WEI)

10 a.m. Urban Models: Concepts, Questions and Opportunities (Tharacad Ramanarayanan, Bayer and Paul Hendley, Syngenta)

10:45 a.m. Examination of Non-Agricultural Pesticide Use by means of GIS Coverages (Roy W. Meyer & Curtis Brown, New Jersey Department of Environmental Protection)

11:15 a.m. A Comparison of PRZM, RZWQM, AND TURFPQ for Modeling Turf Pesticides (Qingli Ma and Stuart Cohen, Environmental & Turf Services, Inc.)

11:45 a.m. Lunch

1 p.m. Methods for Estimating Spatial Distributions of Turf (Michelle Thawley, USEPA/EFED)

1:30 p.m. National PCA assessment for turf (Gerco Hoogeweg, Raghu Vamshi, and Marty Williams, Waterborne Environmental, Inc.)

2:15 p.m. Update on the Drift Reduction Technology (DRT) project (Faruque Khan and Norm Birchfield, USEPA/EFED)

2:45 p.m. Wrap-up

List of Subjects

Environmental protection, Modeling, Pesticides, Pest.

Dated: May 8, 2007.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. E7–9322 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0388; FRL–8131–2]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to review a set of issues being considered by the Agency pertaining to two separate topics. On August 14-15, 2007, the Panel will consider a Review of EPA/ORD/NERL's SHEDS-Multimedia Model, aggregate version 3. On August 16-17, 2007, the Panel will review Assessing Approaches for the Development of PBPK Models of Pyrethroid Pesticides.

DATES: The meeting will be held on August 14-17, 2007, from 8:30 a.m. to 5 p.m, eastern standard time (est.)

Comments. The Agency encourages that written comments be submitted by July 31, 2007 and requests for oral comments be submitted by August 7, 2007. However, written comments and requests to make oral comments may be submitted until the date of the meeting. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before May 29, 2007.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket ID number EPA–HQ–OPP–2007–0388, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments. Your use of the *Federal eRulemaking Portal* to submit comments to EPA electronically is EPA's preferred method for receiving comments.
- *Mail.* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery.* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2007–0388. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instruction before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the docket are listed in a docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although, listed in a docket index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as an ad hoc member of the FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Steve M. Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-0103; fax number: (202) 564-8382; e-mail addresses: *knott.steven@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2007–0388 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than July 31, 2007, to provide FIFRA SAP the time necessary to consider and review the written comments. However, written comments are accepted until the date of the meeting. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies. There is no limit on the extent of written comments for consideration by FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than August 7, 2007, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of

candidates for each meeting, the FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Dietary and residential exposure modeling, probabilistic exposure assessment, statistics, risk assessment with experience understanding the data needed for risk assessment purposes, how to interpret the data, and issues concerning intra-species and inter-species extrapolation, pharmacokinetics with experience in the development and application of PBPK models, and metabolism with experience in the use of *in vitro* approaches for species extrapolation. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 29, 2007]. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel.

In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists for each topic. FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial disclosure information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA, Office of Prevention, Pesticides and Toxic Substances and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by the FQPA of 1996, established a Science Review Board consisting of at least 60 scientists who are available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The FQPA amended laws under which EPA evaluates the safety of pesticide residues in food. Section 408(b)(2)(D)(v) and (vi) of the FFDCA as amended by FQPA, specifies that when determining the safety of a pesticide chemical, EPA shall consider aggregate exposure (i.e., total dietary (food and water), residential, and other non-occupational) and available information concerning the cumulative effects to human health that may result from exposure to other substances that have a common mechanism of toxicity.

Pyrethroid pesticides are currently undergoing evaluation to determine if a cumulative risk assessment is warranted for this class of chemicals. As part of this evaluation, EPA will utilize the SHEDS probabilistic model to estimate cumulative exposure to pyrethroid pesticides; also, EPA is developing physiologically-based pharmacokinetic (PBPK) models to aid in quantitatively assessing exposure dose response relationships for individual pyrethroids and mixtures.

The FIFRA SAP will meet to review the following scientific issues:

1. Review of EPA/ORD/NERL's SHEDS-Multimedia Model, aggregate version 3: The purpose of this review is to request input from the SAP on EPA/ORD/NERL's Stochastic Human Exposure and Dose Simulation for Multimedia, Multipathway Pollutants (SHEDS-Multimedia), aggregate version 3. SHEDS-Multimedia version 3 is a state-of-science computer model for simulating human exposures to multimedia, multipathway environmental pollutants including pesticides. It is a physically-based, probabilistic model that predicts, for user-specified population cohorts, exposures incurred via eating contaminated foods or drinking water,

inhaling contaminated air, touching contaminated surface residues, and ingesting residues from hand- to-mouth or object- to-mouth activities. To do this, it combines information on chemical usage, human activity data (e.g., from Consolidated Human Activity Database (CHAD) time/activity diary surveys and videography studies), environmental residues and concentrations, and exposure factors to generate time series of exposure for simulated individuals. One-stage or two-stage Monte Carlo simulation is used to produce distributions of exposure for various population cohorts (e.g., age/gender groups) that reflect the variability and/or uncertainty in the input parameters. While the core of SHEDS-Multimedia is the concentration-to-exposure module, there are various options (built-in source-to-concentration module; user-entered time series from other models or field study measurements) for obtaining concentration inputs, and SHEDS-Multimedia exposure outputs can be used as inputs to PBPK models.

Finally, the SHEDS-Multimedia version 3 single chemical model can address many useful aspects of aggregate and cumulative risk assessment, related to population aggregate exposures for different multimedia chemicals and the important contributing pathways and factors. Such information will be useful in identifying populations and exposure scenarios of greatest concern for this class of chemicals. These populations and exposure scenarios will in turn be used to determine the most relevant chemical/pyrethroid combinations for which hazard/exposure factors information will need further development in order to support a PBPK dose modeling approach. EPA plans to extend the current single chemical aggregate version of SHEDS to a cumulative version. The cumulative version of SHEDS will be used to estimate exposure resulting from cumulative exposure to pyrethroid pesticides.

At this meeting, the FIFRA SAP panel will be asked to review the following: The dietary module of SHEDS version 3; the residential module of SHEDS version 3; and planned methodologies for extending SHEDS-Multimedia version 3 (aggregate) to SHEDS-Multimedia version 4 (cumulative).

Review of the dietary module will include the methodology and model evaluation. Review of the residential module will include the SAS code, graphic user interface (GUI), technical manual, and user manual. Review of the planned methodologies to extend the single chemical aggregate version of SHEDS (version 3) to the cumulative version (version 4) will include: Algorithms for multiple chemicals and co-occurrence; fugacity-based module for residential concentration predictions; new methodologies for enhanced longitudinal activity diary simulation; Sobol methodology for enhanced sensitivity analyses; planned approach for combining residential and dietary modules; and planned coding and GUI changes for version 4. The panel members will not be asked to review chemical-specific inputs or evaluate outputs at this SAP meeting.

This SAP review is part of the Agency's ongoing process to enhance probabilistic exposure, dose, and risk assessments, and OPP's ongoing efforts to consider available probabilistic exposure and dose models to address FQPA. To assist the FIFRA SAP in their review, each FIFRA SAP member will be provided technical reports describing the SHEDS-Multimedia version 3 model, annotated SHEDS code, GUI, a user guide for the GUI, a technical document describing planned methodologies for extending version 3 to version 4, and several relevant journal articles for reference.

2. Assessing Approaches for the Development of PBPK Models of Pyrethroid Pesticides: The development of these models offers many challenges, including:

a. As a class, pyrethroid pesticides have many structural similarities such that a ''generic'' model structure, with chemical specific adjustments as needed, can be developed. Chemical specific parameters are anticipated to include partition coefficients, hepatic clearance rates and others.

b. It is anticipated that the PBPK models will be used for cross-species extrapolation of internal dose metrics for assessing the risk of pyrethroid neurotoxicity. Based on the results of in vivo experiments in rats, blood and brain concentrations of parent compound correlate with pyrethroid toxicity as measured by motor activity; either of these metrics could be a model output for use in a cumulative risk assessment.

c. Pyrethroids may have one or more chiral centers resulting in numerous stereoisomers. There is limited information on the toxicity and pharmacokinetics of the different stereoisomers. EPA proposes to evaluate three modeling assumptions in order to address the uncertainties due to chiral chemistry of the pyrethroids.

d. Finally, there is limited human data to calibrate and evaluate these models for extrapolation to humans. EPA proposes to develop the human model through the use of computational and *in vitro* experimental approaches using human tissue. To evaluate this approach, EPA plans to develop equivalent rodent and human *in vitro* databases for metabolic and physiological parameters for use in the PBPK models. The utility of this approach will be assessed by comparing rodent model predictions to *in vivo* data. It is likely that scaling factors will be used in order to incorporate these *in vitro* parameters into the rodent model. When calibrating the human data, the scaling factors used in the rodent models will be used in the human models.

The purpose of this review is to request input from the SAP on:

i. The appropriateness of a generic PBPK model,

ii. Potential dose metrics that are relevant for a cumulative risk assessment,

iii. The proposed approach for the incorporation of chiral chemistry into model structure, and

iv. The proposed approach for developing these models with limited human dosimetry data. Planned methodologies for linking exposure to PBPK will also be discussed.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to the FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by late July. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 10, 2007.

Clifford J. Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. E7–9426 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8315–4]

Science Advisory Board Staff Office Notification of Two Public Teleconferences of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to discuss components of a draft report related to valuing the protection of ecological systems and services.

DATES: The SAB will conduct two public teleconferences on June 12, 2007 and June 13, 2007. Each teleconference will begin at 12:30 p.m. and end at 2:30 p.m. (eastern daylight time).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Background on the SAB C–VPESS and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the teleconference is for the SAB C–VPESS to discuss components of a draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. These activities are related to the Committee's overall charge: To assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials: Agendas and materials in support of the teleconferences will be placed on the SAB Web site at: *http://www.epa.gov/sab/* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconference and/or meeting. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via e-mail) 5 business days in advance of each teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office 5 business days in advance of each teleconference above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: May 9, 2007.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–9406 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0909; FRL–8128–9]

Diazinon; Notice of Receipt of Request to Voluntarily Cancel Diazinon Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel the registration of its sole product containing the pesticide diazinon. The request would terminate granular diazinon use in or on lettuce. The request would also terminate the last granular diazinon product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 15, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0909, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number [EPA–HQ–OPP–2006–0909]. EPA's policy is that all

comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9342; fax number: (703) 308-7070 e-mail address: *andreasen.jude@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of a written request dated April 13, 2007 from Wilbur-Ellis, a registrant of diazinon, to cancel its sole remaining granular diazinon product registration. Diazinon is an organophosphate insecticide. The affected product is provided in Table 1. This request will result in the termination of the last granular diazinon product registered in the United States. An amended label for this product incorporating all risk mitigation measures required by the Registration Eligibility Decision (RED) of 2002, except for the closed system packaging requirement, was submitted with this voluntary cancellation request. The Agency intends to approve this label.

Unless comments are received to the contrary, the Agency intends to allow Wilbur-Ellis to continue to sell and distribute diazinon products through December 2008. Existing stocks may be sold or used until depleted.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel its remaining granular diazinon product registration. The affected product and the registrant making the request are identified in Table 1 and Table 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

Wilbur-Ellis, a diazinon registrant, has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless the request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—DIAZINON; PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
2935-408	Diazinon 14G	Wilbur-Ellis

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
2935	Wilbur-Ellis, P.O. Box 1286, Fresno, CA 93715

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Diazinon

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before June 15, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to this request for cancellation of product registrations, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1: The registrant will be allowed to sell and distribute the subject products through December 2008. In addition, existing stocks of diazinon products may be sold or used until they are depleted.

If the request for voluntary cancellation is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 3, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–9205 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0118; FRL–8128–7]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0118. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. EUP

EPA has issued the following EUP:

75624–EUP–2. Issuance. Circle One Global, Inc. One Arthur St. P.O. Box 28, Shellman, GA 39886–0028. This EUP allows the use of less than 75,000 pounds of the antifungal agent containing less than 7.5 pounds of the active ingredient, *Aspergillus flavus* NRRL 21882 on 6,000 acres of corn to evaluate the control of aflatoxin-producing colonies of *Aspergillus flavus*. The program is authorized only in the State of Texas. The EUP is effective from May 3, 2007 to May 2, 2009.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: May 4, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–9311 Filed 5–15–07; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, May 23, 2007, 9:30 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and

2. Achieving Work/Family Balance: Employer Best Practices for Workers with Caregiving Responsibilities

Note: In accordance with the Sunshine Act, the meeting will be open to the public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

This Notice Issued May 14, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–2453 Filed 5–14–07; 1:24 pm]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 4, 2007.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0748.

OMB Approval Date: 04/26/2007.

Expiration Date: 04/30/2010.

Title: Section 64.1504, Restrictions on the Use of Toll-Free Numbers.

Form No.: None.

Estimated Annual Burden: 3,750 responses; 2 to 5 hours per response; 10,500 total annually hourly burden.

Needs and Uses: 47 CFR 64.1504 of the Commission's rules incorporates the requirements of Sections 228(c)(7)–(10) of the Communications Act restricting the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers may not charge a calling party for information conveyed on a toll-free number call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider gives the calling party an introductory message disclosing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

OMB Control No.: 3060–0749.

OMB Approval Date: 04/26/2007.

Expiration Date: 04/30/2010.

Title: Section 64.1059, Disclosure and Dissemination of Pay-Per-Call Information.

Form No.: None.

Estimated Annual Burden: 75 responses; 410 hours per response; 10,250 total annually hourly burden.

Needs and Uses: Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

OMB Control No.: 3060–0752.

OMB Approval Date: 04/26/2007.

Expiration Date: 04/30/2010.

Title: Section 64.1510, Billing Disclosure Requirements for Pay-Per-Call and Other Information Services.

Form No.: None.

Estimated Annual Burden: 1,350 responses; 10 to 40 hours per response; 27,000 total annually hourly burden.

Needs and Uses: Under 47 CFR 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900

number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–9303 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 7, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 16, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167, or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0228.

Title: Section 80.59, Compulsory Ship Inspections.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, non-profit institutions, and state, local or tribal government.

Number of Respondents: 230 respondents; 230 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain and retain benefits.

Total Annual Burden: 460 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The requirement contained in this rule section is necessary to implement the provisions of section 362(b) of the Communications Act of 1934, as amend, which permits the Commission to waive the required annual inspection of certain oceangoing ships for up to 30 days beyond the expiration date of a vessel's radio safety certificate, upon finding that the public interest would be served. The information is used by the Engineer in Charge of FCC Field Offices to determine the eligibility of a vessel for a waiver of the required annual radio station inspection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–9312 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Satellite Network Stations and Space Stations

AGENCY: Federal Communications Commission.

ACTION: Announcement of effective date.

SUMMARY: The Federal Communications Commission (FCC) received Office of Management and Budget (OMB) approval on March 16, 2007 for a revision to the public information collection requirements contained in the FCC's part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations, OMB Control Number 3060–0678, pursuant to the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

DATES: The FCC's Form 312, revised as set forth in 71 FR 62463, Oct. 25, 2006, took effect on April 16, 2007.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, Satellite Division, 445 12th Street, SW., Washington, DC 20554, at (202) 418–1539, or Paul Noone, International Bureau, Satellite Division, 445 12th Street, SW., Washington, DC 20554, at (202) 418–7945. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Judith B. Herman at (202) 418–0124, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission revised OMB Control No. 3060–0678 to add a certification to the Application for Satellite Space and Earth Station Authorizations (FCC Form 312) so that satellite applicants subject to geographic rules can check a box certifying that they will comply with those rules. Currently, section 25.148(c) of the Commission's rules requires

Direct Broadcast Satellite (DBS) operators to provide service to Alaska and Hawaii if ''technically feasible,'' or to provide a technical analysis showing that such service is not technically feasible. In addition, some Mobile Satellite Service (MSS) operators and Non-geostationary Satellite Orbit Fixed Satellite Service (NGSO FSS) operators have similar geographic coverage requirements. For example, Ka-band NGSO FSS systems must provide service between 70 degrees North Latitude and 55 degrees South Latitude for at least 75 percent of every 24-hour period in accordance with section 25.145(c)(1) of the Commission's rules. Finally, this certification will also apply to geographic service rules that take effect in the future.

The addition of the certification will require modification of the FCC Form 312 which is housed in the International Bureau Filing System (''MyIBFS''), an electronic filing system. In 2005, the Commission received approval from the Office of Management and Budget (OMB) for mandatory electronic filing of all satellite and earth station applications. Therefore, all certifications must be filed with the Commission electronically in MyIBFS.

This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. sections 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organizations (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. E7–9335 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval.

May 10, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 15, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at (202) 395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form No.: Not applicable.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,778.

Estimated Time per Response: 0.27 hours—6.7 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 39,844 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personal identifiable information (PII) from individuals.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: In addition to the existing information collection requirements that we previously approved by OMB, in the Order on Reconsideration, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs) (2005 Report and Order), CG Docket No. 02–386, FCC 06–134, which was released on September 13, 2006, the Commission concluded that minor modifications to 47 CFR 64.4002 are needed to clarity carriers' respective obligations under that rule section.

Paragraph 64.4002(d) is modified to require that LEC notify an IXC when the LEC has removed at its local switch a presubscribed customer of the IXC in connection with the customer's selection of ''no-PIC'' (preferred interexchange carrier) status. In this context, the selection of ''no-PIC'' status by the customer refers to the selection of no carriers for interLATA (Local Access Transport and Area) service or no carrier for interLATA service. The Commission concludes that this modification is needed to ensure that an IXC does not continue billing a customer for non-usage-related monthly charges where that customer has contacted his current LEC or his current IXC to select ''no-PIC'' status.

Paragraph 64.4002(e) of the Commission's rules is modified to

include the effective date of any changes to a customer's local service account and the carrier identifications code of the customer's IXC among the categories of information that must be provided to the IXC by the LEC. The Commission concludes that knowing the effective date of account changes will help IXCs to maintain accurate customer account information and that including the carrier identification code of the customer's IXC will enable an IXC to verify that it is the proper recipient of the transmitted information.

Paragraph 64.402(g) of the Commission's rules is modified to make the information categories included in paragraph 64.402(g) consistent with those included in other LEC notifications requirements. Paragraph 64.4002(g) also is modified to require that when a customer changes LECs, but wishes to retain his current PIC, the new LEC must so notify the current PIC so that the current PIC does not erroneously assume, absent additional notification from the new LEC, that the customer also wishes to cancel his current PIC.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. E7–9429 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–1706]

Annual Adjustment of Revenue Thresholds

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the 2006 revenue threshold between Class A carriers and Class B carriers is increased to $134 million. The 2005 revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.950 billion.

FOR FURTHER INFORMATION CONTACT: Raj Kannan, Pricing Policy Division, Wireline Competition Bureau at (202) 418–1565.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released April 12, 2007. This notice announces the inflation-adjusted 2006 revenue thresholds used for classifying carrier categories for various accounting and reporting purposes: (1) distinguishing Class A carriers from Class B carriers; and (2) distinguishing larger Class A carriers from mid-sized carriers. The revenue threshold between Class A carriers and Class B carriers is increased to $134 million. The revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.950 billion. The revenue thresholds for 2006 were determined as follows:

	Class A to Class B threshold	Larger Class A to midsize threshold
(1) GDP–CPI Base	86.68	102.40
(2) 2006 GDP–CPI	116.29	116.29
(3) Inflation Factor (line 2 ÷ 1)	1.3416	1.1356
(4) Original Revenue Threshold	$100 million	$7 billion
(5) 2006 Revenue Threshold (line 3 * 4)	$134 million	$7.950 billion

Federal Communications Commission.

Albert Lewis,

Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. E7–9305 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–2006]

FCC Alerts Public and Merchants of Fraudulent Credit Card Purchases Through Internet Protocol (IP) Relay Service, a Form of Telecommunications Relay Services (TRS)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission urges merchants to use caution in handling telephone orders for goods. The Commission has received informal complaints that people without disabilities, who are posing as deaf or hard of hearing consumers, are misusing an Internet base telecommunications relay service (''TRS'' or ''Relay Service'') called ''IP Relay'' to perpetrate fraudulent business transactions, often by using stolen or fake credit cards.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail *Dana.Jackson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of document DA 07–2006, released May 4, 2007. The full text of document DA 07–2006 and copies of any subsequently filed documents relating to this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 07–2006 and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 07–2006 can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro*.

Synopsis

The Commission urges merchants to use caution in handling telephone orders for goods. Merchants that accept orders made by telephone for goods and services should take steps to ensure that, for *any* order placed by phone, the payment method or credit card is valid and the purchaser is authorized to use the particular credit card. In addition, there are some indicia of fraudulent telephone orders or business transactions that merchants can use to help determine if an order placed by phone is legitimate. These indicia include a caller who: (1) Is happy to order ''whatever you have in stock''; (2) supplies multiple credit cards as one or more are declined; (3) cannot provide the credit card verification code number

(the three digit number on the back of the card); (4) wants the goods shipped through a third party and/or an overseas location; (5) will not identify himself or give a company name; (6) changes delivery or payment method after an order has been approved.

The Commission reminds merchants that TRS provides access to telephone services for people who are deaf or hard of hearing or who have a speech disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) (also called 'relay operators') who relay conversations between people who use different types of telecommunications devices. Initially, all Relay Service calls were made to or from a text telephone (TTY) connected to a regular telephone line. The CA served as the ''link'' in the conversation, converting TTY text for the TTY user to voice for the telephone user to hear, and converting voice messages to text for the TTY user to read. Many TRS users now use a computer or similar device and the Internet to communicate with an ''IP Relay'' CA, who continues to serve as the ''link'' to the telephone user. Advancements in technology are enabling other forms of TRS as well, such as connecting through video conferencing equipment with a CA who is a sign language interpreter. *See* FCC's Fact Sheet about TRS at *http://www.fcc.gov/cgb/consumerfacts/trs.html*. The Commission also reminds merchants who accept telephone orders that they must not ''hang up'' on calls made through a Relay Service. Title III of the Americans with Disabilities Act of 1990 (ADA) requires merchants to ensure that people with disabilities have access to their services. Therefore, if a merchant accepts telephone orders from the general public, the merchant cannot refuse to accept calls from people who are deaf or hard of hearing or who have a speech disability who call through a Relay Service. Calls made through a Relay Service can and must be handled in the same way as any telephone call. For more information on the applicability of the ADA in this context, see generally the United States Department of Justice's ADA homepage, at *http://www.usdoj.gov/crt/ada/adahom1.htm* or contact the DOJ ADA Information Line at 800–514–0301 (voice) or 800–514–0383 (TTY).

Purchases made with stolen or fake credit cards are illegal, and the Department of Justice and the FBI can investigate. The Federal Trade Commission is also aware of this problem. Persons who have been defrauded should contact the FTC directly at *http://www.ftc.gov* or *877–FTC–HELP*. The FBI also has a Web site for complaints and information regarding Internet crimes: *http://www.ic3.gov*. The public may also contact the FCC's Consumer Assistance Information Line at 1–888–225–5322 (voice) or 1–888–835–5322 (TTY). The Commission has a pending Further Notice of Proposed Rulemaking which is examining other steps the FCC might take to prevent misuse of the IP Relay.

See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–06–58A1.doc.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–9336 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 07–1978]

National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services Fund for the July 2007 through June 2008 Fund Year

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment on the National Exchange Carrier Association (NECA), the Interstate Telecommunications Relay Service (TRS) Fund Administrator, annual payment formula and fund size estimate for the Interstate TRS Fund for the period July 2007 through June 2008.

DATES: Comments are due on or before May 16, 2007. Reply comments are due on or before May 23, 2007.

ADDRESSES: You may submit comments, identified by [CG Docket No. 03–123], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Diane Mason, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–A503, Washington, DC 20554. Such submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the filer's name, proceeding (including the lead docket number in the case (CG Docket No. 03–123), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, comments must send diskette copies to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–CB402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–7126 (voice), (202) 418–7828 (TTY), or e-mail at *Diane.Mason@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 07–1978, released May 2, 2007, in CG Docket No. 03–123. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the

caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03–123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

A copy of document DA 07–1978, NECA's submission and any subsequently filed documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document DA 07–1978, NECA's submission and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at their Web site, *http://www.bcpiweb.com*, or call 1–800–378–3160. A Copy of NECA's submission may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at *http://www.fcc.gov.cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

On May 1, 2007, pursuant to 47 CFR 64.604(c)(5)(iii)(H), the National Exchange Carrier Association (NECA), the Interstate Telecommunications Relay Services (TRS) Fund Administrator, submitted its annual payment formula and fund size estimate for the Interstate TRS Fund for the period July 1, 2007, through June 30, 2008. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed May 1, 2007) (*2007 TRS Rate Filing*). NECA proposes per minute compensation rates based on alternative rate calculations for the various forms of TRS. These calculations result in proposed rates ranging from $1.5601 to $1.7225 for traditional TRS; $2.4954 to $3.3278 for speech-to-speech (STS); $1.1002 to $1.2268 for IP Relay; and $4.3480 to $6.4370 for Video Relay Service (VRS). The alternative methodologies result in a proposed carrier contribution factor ranging from 0.0052 to 0.0075, and a Fund size requirement ranging from $397.0 million to $575.4 million.

The Commission seeks comment on NECA's proposed compensation rates for traditional TRS, STS, IP Relay, and VRS for the period of July 1, 2007, through June 30, 2008, as well as the proposed carrier contribution factors and Fund size requirements.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–9440 Filed 5–15–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, May 21, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 11, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–2413 Filed 5–11–07; 4:50 pm]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time) May 22, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the April 16, 2007 Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

a. Monthly Participant Activity Report.

b. Monthly Investment Performance Report.
c. Legislative Report.
3. Old Business.
a. Annual Statement.
b. Dormant Accounts.
c. Automatic Enrollment & Roth Update.

Parts Closed to the Public

4. Security.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 14, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–2440 Filed 5–14–07; 12:03 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have redelegated to the Associate Director, Office of Family Assistance, the following authorities vested in me by the Assistant Secretary of Administration for Children and Families in the memoranda dated February 16, 2007.

(a) Authorities Delegated

1. Authority to administer the provisions of The Child Development Associate Scholarship Assistance Act, 42 U.S.C. 10901–10905, and as amended now and hereafter.

2. Authority to administer the provisions of Subchapter D—Grants for Planning and Development of Dependent Care Programs and for other purposes (Chapter 8, Title VI of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 42 U.S.C. 9871 *et seq.*), and as amended now and hereafter.

3. Authority for the Child Care and Development Block Grants, under Section 5082 of OBRA 1990 (42 U.S.C. 9858 *et seq.*), and as amended now and hereafter.

4. Authority to administer the provisions of the Child Care and Development Block Grant Amendments of 1996, 42 U.S.C. 9801 note, under Sections 601–615 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 1305 note, 42 U.S.C. 601 *et seq.,* and, as amended now and hereafter.

(b) Limitations

1. This redelegation of authority shall be exercised under the Department's existing policies on delegations and regulations.

2. This redelegation does not include the authority to disapprove State, Territorial and Tribal child care plans and amendments, or the authority to disapprove Tribal child care construction and renovation applications.

3. This redelegation does not include the authority to issue official policy transmittals such as Program Instructions, Information Memoranda, or other significant guidance documents (as defined by OMB Bulletin No. 07–02).

4. Decisions which result in new policies that affect the program operation of a substantial number of State, Territorial, or Tribal CCDF grantees requires the concurrence of the Director, Office of Family Assistance. Actions likely to have a significant impact on States, Territories, or Tribes or have political ramifications or be subject to or receive adverse publicity shall be brought to the prior attention of the Director, Office of Family Assistance.

5. This redelegation does not include the authority to issue preliminary notices of possible non-compliance, written notices of findings of non-compliance, penalty and sanction notices, or disallowance notices under 42 U.S.C. 9858g(b) and 42 U.S.C. 9858i(b).

6. The authority to approve resolution of audit findings requires the concurrence of the ACF Office of Administration in all cases.

7. This redelegation does not include the authority to submit reports to Congress and shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

8. The approval or disapproval of grant applications and the making of grant awards require concurrence of the appropriate Grants Officer. The approval or disapproval of contract proposals and awards are subject to the requirements of the Federal Acquisition Regulations and requires the concurrence of the Contracting Officer.

9. This redelegation of authority does not include the authority to sign and issue notices of grant awards.

10. This redelegation of authority does not include the authority to appoint Action Officials for Audit Resolution.

11. This redelegation of authority does not include the authority to appoint Central Office or Regional Office Grant Officers for the administration of the child care related programs.

12. This redelegation of authority does not include the authority to hold hearings.

13. This redelegation of authority does not include the authority to approve or disapprove awards for grants or contracts for research, demonstration, or evaluations relating to child care.

14. Any further redelegation shall be in writing and prompt notification must be provided to all affected managers, supervisors, and other personnel, and requires the concurrence of the Deputy Assistant Secretary for Administration.

(c) Effective Date

This redelegation was effective on May 2, 2007.

(d) Effect on Existing Delegations

This redelegation supersedes all previous delegations to the Associate Director, Child Care Bureau on these subjects.

I hereby affirm and ratify any actions taken by the Associate Director, Child Care Bureau, which, in effect, involved the exercise of these authorities prior to the effective date of this redelegation.

Dated: May 9, 2007.

Sidonie Squier,

Director, Office of Family Assistance.

[FR Doc. E7–9419 Filed 5–15–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have redelegated to the Associate Director, Office of Family Assistance, the following authorities vested in me by the Assistant Secretary of Administration for Children and Families in the memoranda dated February 16, 2007.

(a) Authorities Delegated

1. Authority to administer Income and Eligibility Verification Systems (IEVS), as they pertain to the Administration for Children and Families' programs, under the provisions of Title XI, Section 1137 of the Social Security Act, and as amended now and hereafter.

2. Authority to administer the provisions of Title I, Block Grants for Temporary Assistance for Needy

Families (TANF) under Sections 101–103, 106–110, 112, 115, and 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 1305 note, 42 U.S.C. 601 *et seq.,* and as amended now and hereafter. In addition, in exercising authority under Section 103, ''Section 413, Research, Evaluations, and National Studies,'' of the Social Security Act, the Director, Office of Family Assistance, Administration for Children and Families, is expected to consult with the Department of Health and Human Services, Assistant Secretary for Planning and Evaluation.

3. Authority to administer the provisions of the Adult Assistance (AA) Programs under Titles I, X, XIV and XVI (Grants to States for Aid to the Aged, Blind and Disabled) of the Social Security Act, and as amended now and hereafter.

4. Authority under Section 1119 of the Social Security Act, and as amended now and hereafter, to approve Federal financial participation in payments for repairs to homes owned by recipients of aid or assistance under Titles I, X, XIV, or XVI.

(b) Limitations

1. This delegation of authority shall be exercised under the Department's existing policies on delegations and regulations.

2. This delegation of authority does not include the authority to submit reports to Congress and shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families' authorities.

3. The approval or disapproval of grant applications requires concurrence of the appropriate Grants Officer. The approval or disapproval of contract proposals and awards are subject to the requirements of the Federal Acquisition Regulations and requires the concurrence of the Contracting Officer.

4. The authority to approve/disapprove under 45 CFR 205.55(d) State applications to use alternate sources of information for income and eligibility (i.e., IEVS) requires consultation with the Office of the Deputy Assistant Secretary for Administration and with the other programs affected by the request.

5. This delegation of authority does not include the authority to issue annual rankings of States' most and least successful work programs and out-of-wedlock birth ratios under Sections 413(d)(1) and 413(e)(1) of the Social Security Act.

6. This delegation of authority does not include the authority under sections 409(a) or 412(g) of the Social Security Act to make determinations regarding State or tribal compliance or performance or technical noncompliance and to impose penalties and the authority under section 410(a) of the Social Security Act to issue notices to States or tribes regarding the imposition of such penalties.

7. This delegation of authority does not include the authority to sign and issue notices of grant awards for family assistance programs.

8. This delegation of authority does not include the authority to appoint Central Office and Regional Office Grant Officers for the administration of family assistance programs.

9. This delegation of authority does not include the authority to appoint Action Officials for Audit Resolution.

10. This delegation of authority does not include the authority to conduct research under sections 413(a), (b), and (h) of the Social Security Act or to review proposals and approve State funding for evaluations of Title IV–A programs under section 413(f) of the Social Security Act.

11. This delegation of authority excludes the authority to hold hearings.

12. This delegation of authority does not include the authority to approve or disapprove State requests for Federal financial participation for the costs of automated data processing equipment and services which affect more than one HHS Operating Division.

13. This delegation of authority does not include the authority to make determinations on State appeals concerning audit questions or recommendations by the Department of Health and Human Services (HHS) Audit Agency which involve ACF program practices reviewed under Titles I, X, XI and XVI of the Social Security Act.

14. This delegation of authority does not include the authority to disapprove Adult Assistance State Plans and amendments.

15. This delegation of authority does not include the authority to approve or disapprove TANF work participation plans.

16. This delegation of authority does not include the authority to sign official policy transmittals such as Action Transmittals, Information Memoranda, etc.

17. This delegation of authority does not include the authority to approve or disapprove corrective compliance plans or make reasonable cause determinations.

18. This delegation of authority does not include the authority to make determinations that TANF plans are incomplete.

19. This delegation of authority does not include the authority to disapprove Tribal TANF and Tribal NEW plans or amendments.

20. This delegation of authority does not include the authority to take disallowances in Tribal NEW programs.

21. This delegation of authority does not include the authority to approve or disapprove discretionary grant applications under section 403(a)(2) of the Social Security Act.

22. The issuance of new policy interpretations require the concurrence of the Director, OFA.

23. Actions likely to have a significant impact on State or Tribes, or discretionary grantees or have political ramifications or be subject to or receive adverse publicity shall be brought to the prior attention of the Director, OFA.

24. Any redelegation shall be in writing and prompt notification must be provided to all affected managers, supervisors, and other personnel, and requires the concurrence of the Deputy Assistant Secretary for Administration.

(c) Effective Date

This delegation of authority was effective on April 17, 2007.

(d) Effect on Existing Delegations

As related to the authorities delegated herein, this delegation of authority supersedes all previous delegations of authority to the Associate Director, TANF.

I hereby affirm and ratify any actions taken by the Associate Director, TANF, Office of Family Assistance, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: May 9, 2007.

Sidonie Squier,

Director, Office of Family Assistance.

[FR Doc. E7–9420 Filed 5–15–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0041]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1988 Categorization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 15, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB Control Number 0910–NEW and the title ''Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1988 Categorization.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1988 Categorization (42 CFR 493.17)

A draft guidance document entitled ''Guidance for Administrative Procedures for Clinical Laboratory Improvement Amendments of 1988 Categorization'' (CLIA) was released for comment on August 14, 2000. The document describes procedures FDA will use to assign the complexity category to a device. Typically, FDA assigns complexity categorizations to devices at the time of clearance or approval of the device. In this way, no additional burden is incurred by the manufacturer since the labeling (including operating instructions) is included in the 510(k) or premarket approval (PMA). In some cases, however, a manufacturer may request CLIA categorization even if FDA is not simultaneously reviewing a 510(k) or PMA. One example is when a manufacturer requests that FDA assign CLIA categorization to a previously cleared device that has changed names since the original CLIA categorization. Another example is when a device is exempt from premarket review. In such cases, the guidance recommends that manufacturers provide FDA with a copy of the package insert for the device and a cover letter indicating why the manufacturer is requesting a categorization (e.g., name change exempt from 510(k) review). The draft guidance recommends that in the correspondence to FDA the manufacturer should identify the product code and classification as well as reference to the original 510(k) when this is available.

A previous 60-day notice that published August 14, 2000 (65 FR 49582), announced the availability of a draft guidance and did not include a Paperwork Analysis Section. This 60-day notice for public comment supersedes that notice and is correcting that error.

In the **Federal Register** of February 14, 2007 (72 FR 7043), FDA published a 60-day notice soliciting public comment on the proposed collection of information requirements. In response to that notice, no comments were received.

The likely respondents for this collection are Investigational New Drug Application sponsors.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

42 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
493.17	60	15	900	1	900	$45,000
Total	60	15	900	1	900	$45,000

[1] There are no capital costs associated with this collection of information.

The number of respondents is approximately 60. On average, each respondent will request categorizations (independent of a 510(k) or PMA) 15 times per year. The cost, not including personnel, is estimated at $50. This includes the cost of copying and mailing copies of package inserts and a cover letter, which includes a statement of the reason for the request and reference to the original 510(k) numbers, including regulation numbers and product codes.

Dated: May 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9435 Filed 5–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0494]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Cosmetic Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Cosmetic Labeling Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 4, 2006 (71 FR 70411), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned

OMB control number 0910–0599. The approval expires on May 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9436 Filed 5–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0372]

Determination That MEPRON (Atovaquone) Tablets, 250 milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that MEPRON (atovaquone) tablets, 250 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for atovaquone tablets, 250 mg.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.161(a)(1) (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

MEPRON (atovaquone) tablets, 250 mg, are the subject of approved NDA 20–259 held by GlaxoSmithKline (Glaxo). MEPRON (atovaquone) tablets, 250 mg, approved November 25, 1992, are indicated for the prevention of *Pneumocystis carinii* pneumonia in patients who are intolerant to trimethoprim-sulfamethoxazole (TMP-SMX). Glaxo ceased marketing MEPRON (atovaquone) tablets, 250 mg, in 1995.

Lachman Consultant Services, Inc., submitted a citizen petition dated September 7, 2006 (Docket No. 2006P–0372/CP1), under 21 CFR 10.30, requesting that the agency determine, as described in § 314.161, whether MEPRON (atovaquone) tablets, 250 mg, were withdrawn from sale for reasons of safety or effectiveness.The agency has determined that Glaxo's MEPRON (atovaquone) tablets, 250 mg, were not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that MEPRON tablets, 250 mg, were withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined in this notice, Glaxo's MEPRON (atovaquone) tablets, 250 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list MEPRON (atovaquone) tablets, 250 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety oreffectiveness. ANDAs that refer to MEPRON (atovaquone) tablets, 250 mg, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs.

Dated: May 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9348 Filed 5–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0112]

Guidance for Industry on Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics.'' This guidance provides recommendations to applicants on endpoints for cancer clinical trials submitted to FDA to support effectiveness claims in new drug applications, biologics license applications, or supplemental applications. Applicants are encouraged to use this guidance to design cancer clinical trials and to discuss protocols with the agency. This guidance provides background information and discusses general regulatory principles. Additional companion guidances will follow and will focus on endpoints for specific cancer types (e.g., lung cancer, colon cancer) to support drug approval or labeling claims. This guidance, and the subsequent indication-specific guidances, should speed the development and improve the quality of protocols submitted to the agency to support anticancer effectiveness claims.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and

Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Rajeshwari Sridhara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1210, Silver Spring, MD 20903–0002, 301–796–2070; or

Peter Bross, Center for Biologics Evaluation and Research (HFM–755), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5378.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics.'' FDA is developing guidance on oncology endpoints through a process that includes public workshops of oncology experts and discussions before FDA's Oncologic Drugs Advisory Committee. This guidance provides background information and general principles. The endpoints discussed in this guidance are for drugs to treat patients with an existing cancer. This guidance does not address endpoints for drugs to prevent or decrease the incidence of cancer.

The availability of a draft of this guidance was announced in the **Federal Register** of April 4, 2005 (70 FR 17095). Comments received from industry, professional societies, and consumer groups on the draft guidance have been taken into consideration by FDA in finalizing this guidance, and some of the changes are summarized here. The section on future methods for assessing progression has been clarified based on the comments received and FDA's current thinking and practice. The section on no treatment or placebo control and the section on isolating drug effect in combination also have been clarified based on the comments received and FDA's view that these do not directly concern the selection or evaluation of endpoints. Throughout the guidance document, the language has been condensed and simplified to be concise and clear.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on clinical trial endpoints for the approval of cancer drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under 0910–0014; the collections of information in 21 CFR part 314 have been approved under 0910–0001, and the collections of information referred to in the guidance for industry entitled ''Special Protocol Assessment'' have been approved under 0910–0470.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9345 Filed 5–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0185]

Draft Guidance for Industry and Review Staff on Labeling for Human Prescription Drugs—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and review staff entitled ''Labeling for Human Prescription Drugs—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information.'' This guidance is intended to help applicants and the review staff in the Center for Drug Evaluation and Research (CDER) at FDA determine when a drug belongs to an established pharmacologic class as well as how to select the appropriate word or phrase (term) that describes the pharmacologic class for inclusion in the *Indications and Usage* section of Highlights of Prescribing Information (*Highlights*) of approved labeling.

DATES: Submit written or electronic comments on the draft guidance by August 14, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: William Pierce, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6474, Silver Spring, MD 20993–0002, 301–796–0700.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and review staff entitled ''Labeling for Human Prescription Drugs—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information.'' This guidance is intended to help applicants and CDER's review staff determine when a drug belongs to an established pharmacologic class as well as how to select the appropriate word or phrase (term) that describes the pharmacologic class for inclusion in the *Indications and Usage* section of Highlights of Prescribing Information (*Highlights*) of approved labeling, as required by § 201.57(a)(6) (21 CFR 201.57(a)(6)).

In January 2006, FDA published a final rule that amended the requirements for the content and format of labeling for human prescription drug and biological products.[1] The new labeling format is intended to make it easier for health care professionals to access, read, and use the information in prescription drug labeling, thereby facilitating professionals' use of labeling to make prescribing decisions.

The rule requires that the following statement appear under the *Indications and Usage* section of *Highlights* if a drug is a member of an established pharmacologic class:[2]

''(*Drug*) is a (*name of class*) indicated for (*indication(s)*).''

If the drug is not a member of an established pharmacologic class, the statement must be omitted.

Knowing the established pharmacologic class can provide health care professionals with important information about what to expect from a drug and how it relates to other therapeutic options. Such information can also help reduce the risk of duplicative therapy and drug interactions. This draft guidance provides recommendations for identifying the established pharmacologic class and its appropriate term for inclusion in the *Indications and Usage* section of *Highlights*.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9347 Filed 5–15–07; 8:45 am]

BILLING CODE 4160–01–S

[1]See ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (71 FR 3922, January 24, 2006; 21 CFR parts 201, 314, and 601).

[2]See § 201.57(a)(6).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Grant Program

Announcement Type: New and Competing Continuation Discretionary Funding Cycle for Fiscal Year 2008.

Funding Announcement Number: HHS–2008–IHS–TMD–0001.

Catalog of Federal Domestic Assistance Number(s): 93.228.

Key Dates: Training: Application Requirements Session: May 8–9, May 23–24, and June 13–14, 2007; Grant Writing Session: June 4–8, 2007.

Application Deadline Date: August 3, 2007.

Receipt Date for Final Tribal Resolution: September 28, 2007.

Review Date: October 1–5, 2007.

Application Notification Date: November 12, 2007.

Earliest Anticipated Start Date: January 1, 2008.

I. Funding Opportunity Description

The Indian Health Service (IHS) announces competitive grant applications for the Tribal Management Grant (TMG) Program. This program is authorized under Section 103(b)(2) and Section 103(e) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, as amended. This program is described at 93.228 in the Catalog of Federal Domestic Assistance.

The TMG Program is a national competitive discretionary grant program pursuant to 45 CFR 75 and 45 CFR 92 established to assist Federally-recognized Tribes and Tribally-sanctioned Tribal organizations in assuming all or part of existing IHS programs, services, functions, and activities (PSFA) through a Title I contract and to assist established Title I contractors and Title V compactors to further develop and improve their management capability. In addition, TMGs are available to Tribes/Tribal organizations under the authority of Public Law (Pub. L.) 93–638 section 103(e) for (1) obtaining technical assistance from providers designated by the Tribe/Tribal organization (including Tribes/Tribal organizations that operate mature contracts) for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management and the development of cost allocation plans for indirect cost rates; and (2) planning, designing and evaluating Federal health programs serving the Tribe/Tribal organization, including Federal administrative functions.

Funding Priorities: The IHS has established the following funding priorities for TMG awards.

- Priority 1—Any Indian Tribe that has received Federal recognition (restored, un-terminated, funded, or unfunded) within the past 5 years, specifically received during or after March 2002.
- Priority II—All other eligible Federally-recognized Indian Tribes or Tribally-sanctioned Tribal organizations submitting a competing continuation application or a new application for the sole purpose of addressing audit material weaknesses. The audit material weaknesses are identified in Attachment A (Summary of Findings and Recommendations) and other attachments, if any, of the transmittal letter received from the Office of the Inspector General (OIG), National External Audit Review Center (NEARC), Department of Health and Human Services (HHS). Please identify the

weakness to be addressed by underlining the item on the Attachment A. Please refer to Section III.3, ''Other Requirements'' for more information regarding Priority II participation.

Federally-recognized Indian Tribes or Tribally-sanctioned Tribal organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars received in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and are related to 25 Code of Federal Regulations (CFR) Part 900, ''Indian Self-Determination and Education Assistance Act Amendments,'' Subpart F–''Standards for Tribes and Tribal Organizations.''

Priority II participation is only applicable to the Health Management Structure project type. For more information see Section II Eligible Project Types, Maximum Funding and Project Periods.

• Priority III—All other eligible Federally-recognized Indian Tribes or Tribal organizations submitting a competing continuation application or a new application.

The funding of approved Priority I applicants will occur before the funding of approved Priority II applicants. Priority II applicants will be funded before approved Priority III applicants. Funds will be distributed until depleted.

II. Award Information:

Type of Awards: Grant.

Estimated Funds Available: Subject to the availability of funds, the estimated amount available is $2,529,000 in fiscal year (FY) 2008. There will be only one funding cycle in FY 2008. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: An estimated 20–25 awards will be made under the Program.

Project Periods: Varies from 12 months to 36 months. Please refer to ''Eligible Project Types, Maximum Funding and Project Periods'' under this section for more detailed information.

Estimated Award Amount: $50,000/year–$100,000/year. Please refer to ''Eligible Project Types, Maximum Funding and Project Periods'' below for more detailed information.

Eligible Project Types, Maximum Funding and Project Periods: Applications may only be submitted for one project type. Applicants must state the project type selected. The TMG Program consists of four project types: (1) Feasibility study; (2) planning; (3) evaluation study; and (4) health management structure. Applications that address more than one project type will be considered ineligible and will be returned to the applicant. The maximum funding levels noted include both direct and indirect costs. Applicant budgets may not exceed the maximum funding level or project period identified for a project type. Applicants whose budget or project period exceed the maximum funding level or project period will be considered ineligible and will not be reviewed. Please refer to Section IV.5. ''Funding Restrictions'' for further information regarding ineligible activities.

1. Feasibility Study (Maximum funding/project period: $ 70,000/12 months)

A study of a specific IHS program or segment of a program to determine if Tribal management of the program is possible. The study shall present the planned approach, training and resources required to assume Tribal management of the program. The study must include the following four components:

• Health needs and health care services assessments that identify existing health care services and delivery system, program divisibility issues, health status indicators, unmet needs, volume projections and demand analysis.

• Management analysis of existing management structures, proposed management structures, implementation plans and requirements, and personnel staffing requirements and recruitment barriers.

• Financial analysis of historical trends data, financial projections and new resource requirements for program management costs and analysis of potential revenues from Federal/non-Federal sources.

• Decision statement/report that incorporates findings, conclusions and recommendations; the presentation of the study and recommendations to the governing body for Tribal determination regarding whether Tribal assumption of program(s) is desirable or warranted.

2. Planning (Maximum funding/project period: $50,000/12 months)

A collection of data to establish goals and performance measures of current health programs or anticipated PSFAs under a Title I contract. Planning will specify the design of health programs and the management systems (including appropriate policies and procedures) to accomplish the health priorities of the Tribe/organization. For example, planning could include the development of a Tribal Specific Health Plan or a Strategic Health Plan, etc. Please note: The Public Health Service urges applicants submitting strategic health plans to address specific objectives of Healthy People 2010. Interested applicants may purchase a copy of Healthy People 2010 (Summary Report in print; Stock No. 017–001–00547–9) or CD–ROM (Stock No. 107–001–00549–5) through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–1800. This information is available in electronic form at the following Web site: *www.health.gov/healthypeople/publications.*

3. Evaluation Study (Maximum funding/project period: $50,000/12 months)

A systematic collection, analysis and interpretation of data for the purpose of determining the value of a program. The extent of the evaluation study could relate to the goals and objectives, policies and procedures or program regarding targeted groups. The evaluation study could also be used to determine the effectiveness and efficiency of a Tribal program operation (i.e. direct services, financial management, personnel, data collection and analysis, third-party billing, etc.) as well as determine the appropriateness of new components to a Tribal program operation that will assist Tribal efforts to improve the health care delivery systems.

4. Health Management Structure (Average funding/project period: $100,000/12 months; maximum funding/project period: $300,000/36 months)

Implementation of systems to manage or organize PSFAs. Management structures include health department organizations, health boards, and financial management systems including systems for accounting, personnel, third-party billing, medical records, management information systems, etc. This includes the design, improvements and correction of management systems that address weaknesses identified through quality control measures, internal control reviews and audit report findings under the Office of Management and Budget (OMB) Circular No. A–133—Revised June 27, 2003, ''Audits of States, Local Governments, and non-Profit Organizations.'' A copy of this circular and 25 Code of Federal Regulations (CFR) Part 900, ''Indian Self-Determination and Education Assistance Act Amendments'', Subpart F—''Standards for Tribal or Tribal Organization Management Systems'' is available in the appendix of the TMG application package. Please see Section IV ''Application and Submission

Information'' for directions about how to request a copy of the TMG application package.

III. Eligibility Information

1. Indian Tribe or Tribal organization as defined by Pub. L. 93–638, Indian Self-Determination and Education Assistant Act, as amended. Eligible applicants include Tribal organizations that operate mature contracts that are designated by a Tribe to provide technical assistance and/or training. Only one application per Tribe or Tribal organization is allowed. This paragraph should be cross-referenced with Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Applications Submission).

2. Cost Sharing or Matching—The TMG Program does not require matching funds or cost sharing. However, in accordance with Pub. L 93–638 section 103(c), the TMG funds may be used as matching shares for any other Federal grant programs that develop Tribal capabilities to contract for the administration and operation of health programs.

3. Other Requirements—If application budgets exceed the stated dollar amount that is outlined within this announcement, it will not be considered for funding.

The following documentation is required:

• Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. A copy of that resolution must be provided for review. If an official Tribal resolution is not available by the application deadline, a draft resolution should be submitted. However, an official signed Tribal resolution must be received by the Division of Grants Operations prior to the beginning of the Objective Review (October 1–5, 2007). If an official signed resolution is not received by the close of business on September 28, 2007, the application will be considered incomplete, ineligible for review and returned to the applicant without consideration. Applicants submitting additional documentation after the initial application submission are required to ensure the information was received by the IHS by obtaining documentation confirming delivery or receipt (i.e. fax transmittal receipt, FedEx tracking, postal return receipt, etc.).

• Documentation for Priority I Participation—A copy of the **Federal Register** notice or letter from the Bureau of Indian Affairs verifying establishment of Federal Tribal status within the last 5 years. Date must reflect that Federal recognition was received during or after March 2002.

• Documentation for Priority II Participation—A copy of the transmittal letter and Attachment A from the OIG, NEAR Center, HHS. See ''Funding Priorities'' in Section I for more information. If an applicant is unable to locate a copy of their most recent transmittal letter or needs assistance with audit issues, information or technical assistance may be obtained by contacting the IHS Division of Audit Resolution at (301) 443–7301, or the National External Audit Review Center help line at (816) 374–6714 ext. 108. The auditor may also have the information/documentation required.

Federally-recognized Indian Tribes or Tribally-sanctioned Tribal organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and are related to 25 CFR Part 900, ''Indian Self-Determination and Education Assistance Act Amendments,'' Subpart F—''Standards for Tribes and Tribal Organizations.''

• Documentation of Consortium Participation—If an Indian Tribe submitting an application is a member of a consortium, the Tribe must:

—Identify the consortium.
—Indicate if the consortium intends to submit a TMG application.
—Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.

• Identify all of the consortium member Tribes.

• Identify if any of the member Tribes intend to submit a TMG application of their own.

• Demonstrate that the consortium's application does not duplicate or overlap any objectives of the other consortium members who may be submitting their own TMG application.

Please refer to Sections IV.5. ''Funding Restrictions'' and V.2. ''Review and Selection Process'' for more information regarding other application submission information and/or requirements.

IV. Application and Submission Information

1. Application package may be found in Grants.gov (*www.grants.gov*) or at: *www.ihs.gov/NonMedicalPrograms/gogp*. Information regarding the electronic application process may be obtained from the following persons:

Ms. Patricia Spotted Horse, Program Analyst, Office of Tribal Programs, Indian Health Service, 801 Thompson Avenue, Suite 220, Rockville, Maryland 20852, (301) 443–1104 (Telephone), (301) 443–4666 (Fax). E-Mail Address: *Patricia.SpottedHorse@IHS.GOV*.

Mr. Pallop Chareonvootitam, Grants Management Specialist, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, TMP 360, Rockville, Maryland 20852, (301) 443–5204 (Telephone), (301) 443–9602 (Fax). E-Mail Address: *Pallop.Chareonvootitam@IHS.GOV*.

Ms. Michelle G. Bulls, Chief Grants Management Officer, Director, Division of Grants Policy, Indian Health Service, 801 Thompson Avenue, TMP 625, Rockville, Maryland 20852, (301) 443–6528 (Telephone), E-Mail Address: *Michelle.Bulls@IHS.GOV*.

The entire application package is available at: *www.ihs.gov/NonMedicalPrograms/tmg*. Detailed application instructions for this announcement are downloadable on Grants.gov.

2. Content and Form of Application Submission

• Be single spaced.
• Be typewritten.
• Have consecutively numbered pages.
• Use black type not smaller than 12 characters per one inch.
• Contain a narrative that does not exceed 14 typed pages that include the other submission requirements below. The 14-page narrative does not include the abstract, the work plan, standard forms, Tribal resolution(s), table of contents, budget, budget justifications, multi-year narratives, multi-year budget, multi-year budget justification, and/or other appendix items.
• Abstract (one page) summarizing the project.
• Introduction and Need for Assistance.
• Project Objective(s), Approach and Results and Benefits.
• Project Evaluation.
• Organizational Capabilities and Qualifications.

Public Policy Requirements: All Federal-wide public policies apply to

IHS grants with exception of Lobbying and Discrimination.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST) on Friday, August 3, 2007. If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant must contact Michelle G. Bulls, Division of Grants Policy fifteen days prior to the application deadline and advise of the difficulties that your organization is experiencing. The grantee must obtain prior approval, in writing (emails are acceptable) allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV.2. above. Applications not submitted through Grants.gov, without an approved waiver, will be returned to the applicant without review or consideration. Late applications will not be accepted for processing, will be returned to the application and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and indirect costs.
- Only one grant will be awarded per applicant.
- Ineligible Project Activities

The TMG may not be used to support recurring operational programs or to replace existing public and private resources. Note: The inclusion of the following projects or activities in an application will render the application ineligible and the application will be returned to the applicant:

—Planning and negotiating activities associated with the intent of a Tribe to enter the IHS Self-Governance Project. A separate grant program is administered by the IHS for this purpose. Prospective applicants interested in this program should contact Ms. Misty Nuttle, Office of Tribal Self-Governance, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852, (301) 443–7821, and request information concerning the ''Tribal Self-Governance Program Planning Cooperative Agreement Announcement'' or the ''Negotiation Cooperative Agreement Announcement.''
—Projects related to water, sanitation, and waste management.
—Projects that include long-term care or provision of any direct services.
—Projects that include tuition, fees, or stipends for certification or training of staff to provide direct services.
—Projects that include pre-planning, design, and planning of construction for facilities, including activities relating to Program Justification Documents.
—Projects that propose more than one project type. Please see Section II, ''award Information'', specifically ''Eligible Project Types, Maximum Funding and Project Periods'' for more information. an example of a proposal with more than one project type that would be considered ineligible may include the creation of a strategic health plan (defined by TMG as a planning project type) and improving third-party billing structures (defined by TMG as a health management structure project type).

- Other Limitations—A current TMG recipient cannot be awarded a new, renewal, or competing continuation grant for any of the following reasons:

—A grantee may not administer two TMGs at the same time or have overlapping project/budget periods;
—The current project is not progressing in a satisfactory manner; or
—The current project is not in compliance with program and financial reporting requirements.
—Delinquent Federal Debts: No award shall be made to an applicant who has an outstanding delinquent Federal debt until either:
—The delinquent account is paid in full; or
—A negotiated repayment schedule is established and at least one payment is received.

6. Other Submission Requirements

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov*. The Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance, please call (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications.

To submit an application electronically, please use the *www.Grants.gov* apply site. Download a copy of the application package, on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please directly contact Grants.gov Customer Support at: *www.Grants.gov/CustomerSupport.*
- Upon contacting Grants.gov obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained.
- If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (emails are acceptable), to *Michelle.Bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded by the applicant from Grants.gov, and sent directly to the Division of Grants Operations, 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by the due date, August 3, 2007.
- Upon entering the Grants.gov site, there is information available outlining the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov, as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, you, as the applicant, must have a Data Universal Numbering System (DUNS) Number and must register in the CCR. You should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and

all necessary assurances and certifications.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.

• If Tribal resolutions or letters of support are required, please fax to the Grants Management Specialist identified in this announcement.

• Your application must comply with any page limitations requirements described in the program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Indian Health Service, DGO will retrieve your application from Grants.gov. DGO will not notify applicants that the application has been received.

• You may access the electronic application for this program on *www.Grants.gov*.

• You may search for the downloadable application package by either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.

• The applicant must provide the Funding Opportunity Number: HHS–2008–IHS–TMD–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *www.Grants.gov/CCCRRegister*.

More detailed information regarding these registration processes can be found at *www.Grants.gov*.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 14-page narrative should include only the first years of activities; information for multi-year projects should be included as an appendix. See ''Multi-Year Project Requirements'' at the end of this section for more information.

1. Abstract—one page summary

A. Criteria

Introduction and Need for Assistance (20 Points)

(1) Describe the Tribe's/Tribal organization's current health operation. Include what programs and services are currently provided (i.e., Federally funded, State funded, etc.), information regarding technologies currently used (i.e., hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (i.e., Tribal staff, Area Office, vendor, etc.). Include information regarding whether the Tribe/Tribal organization has a health department and/or health board and how long it has been operating.

(2) Describe the population to be served by the proposed project. Include a description of the number of IHS eligible beneficiaries who currently use services.

(3) Describe the geographic location of the proposed project including any geographic barriers to the health care users in the area to be served.

(4) Identify all TMGs received since FY 2002, dates of funding and summary of project accomplishments. State how previous TMG funds facilitated the progression of health development relative to the current proposed project. (Copies of reports will not be accepted.)

(5) Identify the eligible project type and priority group of the applicant.

(6) Explain the reason for your proposed project by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed project. Explain how these gaps/weaknesses were discovered. If proposed project includes information technology (i.e., hardware, software, etc.), provide further information regarding measures taken or to be taken that ensure the proposed project will not create other gaps in services or infrastructure (i.e., IHS interface capability, Government Performance and Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.).

(7) Describe the effect of the proposed project on current programs (i.e., Federally funded, State funded, etc.) and, if applicable, on current equipment (i.e., hardware, software, services, etc.). Include the effect of the proposed project on planned/anticipated programs and/or equipment.

(8) Addresses how the proposed project relates to the purpose of the TMB Program by addressing the appropriate description that follows:

• Identify if the Tribal/Tribal organization is an IHS Title I contractor. Address if the self-determination contract is a master contract of several programs or if individual contracts are used for each program. Include information regarding whether or not the Tribe participates in a consortium contract (i.e., more than one Tribe participating in a contract). Address what programs are currently provided through those contracts and how the proposed project will enhance the organization's capacity to manage the contracts currently in place.

• Identify if the Tribe/Tribal organization is an IHS Title V compactor. Address when the Tribe/Tribal organization entered into the compact and how the proposed project will further enhance the organization's management capabilities.

• Identify if the Tribe/Tribal organization is not a Title I or Title V organizations. Address how the proposed project will enhance the organization's management capabilities, what programs and services the organization is currently seeking to contract and an anticipated date for contract.

Project Objective(s), Workplan and Consultants (40 Points)

A. Identify the proposed project objective(s) addressing the following:

• Measurable and (if applicable) quantifiable.

• Results oriented.

• Time-limited.

Example: The Tribe will increase the number of bills processed by 15% by installing new software by the end of 12 months.

B. Address how the proposed project will result in change or improvement in program operations or processes for each proposed project objective. Also address what tangible products are expected from the project (i.e., policies and procedures manual, health plan, etc).

C. Address the extent to which the proposed project will build the local capacity to provide, improve, or expand services that address the needs(s) of the target population.

D. Submit a workplan in the appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing the proposed project objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps taken.
- Identify who will accept and/or approve work products at the end of the proposed project.
- Include any training that will take place during the proposed project and who will be attending the training.
- Include evaluation activities planned.

E. If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume in the appendix.

F. Describe what updates (i.e., revision of policies/procedures, upgrades, technical support, etc.) will be required for the continued success of the proposed project. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

Project Evaluation (15 Points)

Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation related to the results identified in the objectives, and process evaluation relates to the workplan and activities of the project.

A. For outcome evaluation, describe:

- What the criteria will be for determining success of each objective.
- What data will be collected to determine whether the objective was met?
- At what intervals will data be collected?
- Who will collect the data and their qualifications?
- How the data will be analyzed.
- How the results will be used.

B. For process evaluation, describe:

- How the project will be monitored and assessed for potential problems and needed quality improvements.
- Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications?
- How ongoing monitoring will be used to improve the project.
- Any projects, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.
- How the project will document what is learned throughout the project period.

C. Describe any evaluation efforts that are planned to occur after the grant period ends.

D. Describe the ultimate benefit to the Tribe that is expected to result from this project. An example of this might be the ability of the Tribe to expand preventive health services because of increased billing and third party payments.

Organizational Capabilities and Qualifications (15 Points)

A. Describe the organizational structure of the Tribe/Tribal organization beyond health care activities.

B. Provide information regarding plans to obtain management systems if the Tribe/Tribal organization does not have an established management system currently in place that complies with 25 CFR 900, Subpart F, and ''Standards for Tribal Management Systems''. If management systems are already in place, simply note it. (A copy of the 25 CFR 900, Subpart F, is available in the TMG announcement.)

C. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

D. Describe what equipment (i.e., fax machine, phone, computer, etc.) and facility space (i.e., office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.

E. List key personnel who will work on the project. Include title used in the workplan. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed project. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities. If a position is to be filled, indicate that information on the proposed position description.

F. If the project requires additional personnel (i.e., IT support, etc.), address how the Tribe/Tribal organization will sustain the position(s) after the grant expires. (If there is no need for additional personnel, simply note it.)

Categorical Budget and Budget Justification (10 Points)

A. Provide a categorical budget for each of the 12-month budget periods requested.

B. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

C. Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (i.e., equipment specifications, etc.)

Multi-Year Project Requirements

Projects requiring a second and/or third year must include a narrative addressing the second and/or third year's project objectives, evaluation components, work plan, categorical budget and budget justification. The same weights and criteria as noted in Section V. Application Review Information that is used to evaluate a one-year project or the first year of a multi-year project will be applied when evaluating the second and third years of a multi-year application. A weak second and/or third year submission could negatively impact the overall score of an application.

Appendix Items

A. Work plan for proposed objectives.
B. Position descriptions for key staff.
C. Resumes of key staff that reflect current duties.
D. Consultant proposed scope of work (if applicable).
E. Indirect Cost Agreement.
F. Organizational chart (optional).
G. Multi-Year Project Requirements (if applicable).

2. Review and Selection Process

In addition to the above criteria/requirements, applications are considered according to the following:

A. Application Submission (Application Deadline: August 3, 2007). Applications received in advance of or by the deadline and verified by the tracking number will undergo a preliminary review to determine that:

- The applicant and proposed project type is eligible in accordance with this grant announcement;

• The application is not a duplication of a previously funded project; and

• The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise the application may be returned.

B. Competitive Review of Eligible Applications (Objective Review: October 1–5, 2007). Applications meeting eligibility requirements that are complete, responsive and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TMG funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC and scored high enough to be considered for funding will be reviewed by the Division of Grants Operations for cost analysis and further recommendation. The program official accepts the Division of Grants Operations' recommendations for consideration when funding applications. The program official forwards the final approved list to the Director, Office of Tribal Programs, for final review and approval. Applications scoring below 60 points will be disapproved. Applications that are approved but not funded will not be carried over into the next cycle for funding consideration.

3. Anticipated Announcement and Award Dates

The IHS anticipates the earliest award start date will be January 1, 2008.

VI. Award Administration Information

1. Award Notices

ORC Results Notification: November 12, 2007. The Director, Office of Tribal Programs, or program official, will notify the contact person identified on each proposal of the results in writing via postal mail. Applicants whose applications are declared ineligible will receive written notification of the ineligibility determination and their grant application via postal mail. The ineligible notification will include information regarding the rationale for the ineligible decision citing specific information from the original grant application. Applicants who are approved but unfunded and disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted. Applicants who are approved and funded will be notified through the official Notice of Award (NoA) document. The NoA will be signed by the Grants Management Officer and is the authorizing document for notifying grant recipients of funding. The NoA serves as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period and the budget period. Any other correspondence announcing to the Applicant's Project Director that an application was recommended for approval is not an authorization to begin performance. Pre-award costs are not allowable charges under this program grant.

2. Administrative Requirements

Grants are administered in accordance with the following documents:

• This grant announcement.

• Health and Human Services regulations governing Pub. L. 93–638 grants at 42 CFR 36.101 et seq.

• 45 CFR Part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Including Indian Tribes,'' or 45 CFR Part 74, ''Administration of Grants to Non-Profit Recipients''.

• Public Health Service Grants Policy Statement.

• Appropriate Cost Principles: OMB Circular A–87, ''State and Local Governments,'' or OMB Circular A–122, ''Non profit Organizations''.

• OMB Circular A–133, ''Audits of States, Local Government and Non-Profit Organizations''.

• Other Applicable OMB circulars.

3. Indirect Costs

This section applies to all grant recipients that request indirect cost in their application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the awarding office, the award shall funds for reimbursement of indirect costs. However, the indirect cost portion will remain restricted until the current rate is provided to DGO.

Generally, indirect costs rates for IHS Tribal organization grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov* and indirect cost rates that are for IHS funded Federally recognized Tribes are negotiated with the Department of Interior. If your organization has questions regarding the indirect cost policy, please contact the Division of Grants Operations (DGO) at 301–443–5204.

4. Reporting

A. Progress Report. Program progress reports are required either simi-annually or annually. [Semi-annual] program progress reports must be submitted within 30 days at the end of the half year. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Reports. Financial status reports are required either simi-annually or annually. [Semi-annual] financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

C. Reports. Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment.

Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organizations or the individual responsible for preparation of the reports.

VII. Agency Contact(s)

Interested parties may obtain TMG programmatic information from the TMG Program Coordinator listed under Section IV of this program announcement.

Grant related and business management information may be obtained from the Grants Management Specialist listed under Section IV of this program announcement. Grants.gov concerns submission and waiver requests may be addressed by Ms. Michelle Bulls, Division of Grants Policy. Contact information is noted under Section IV of this program announcement. Please note that the telephone numbers provided are not toll-free.

VIII. Other Information

The IHS will have three training sessions to assist applicants in preparing their FY 2008 TMG application. There will be one 5-day training session and three 2-day training sessions. The 5-day training session will provide participants with basic grant writing skills, information regarding where to search for funding opportunities, and the opportunity to begin writing a TMG grant proposal. The 2-day training sessions will focus specifically on the TMG requirements providing participants with information contained in this announcement, clarifying any issues/questions applicants may have and critiquing project ideas. In an effort to make the 2-day training sessions productive, participants are expected to bring draft proposals to these meetings.

Priority will be given to groups eligible to apply for the TMG Program. Participation is limited to two personnel from each Tribe or Tribal organization. All sessions are first-come first-serve with the above limitations noted. All participants are responsible for making and paying for their own travel arrangements. Interested parties should register with the TMG staff prior to making travel arrangements to ensure space is available in selected session. There is no registration fee to attend the training session(s). The registration form may be obtained from the TMG Web site at: *www.ihs.gov/NonMedical Programs/tmg*. The registration form may be faxed to (301) 443–4666. The anticipated training dates and locations are listed below in chronological order:

- May 8–9, 2007—Oklahoma City, Oklahoma (Limit 25)
- May 23–24, 2007—Portland, Oregon (Limit 25)
- June 4–8, 2007—Minneapolis, Minnesota (Limit 25) (TGCI Grantsmanship Training)
- June 13–14, 2007—Billings, Montana (Limit 25)

IHS Checklist

The following IHS Checklist is included to assist applicants in proposal preparation and follow-up. Applicants are highly encouraged to employ this checklist for their benefit and to submit it as part of their proposal. This checklist will be utilized by the Office of Tribal Programs during their initial programmatic review of the application to ensure required items requested are submitted and the application is eligible for further review via the Objective Review Committee. This checklist is available on the TMG Web site at *www.ihs.gov/nonmedicalprograms/tmg*.

IHS FY 2008 TRIBAL MANAGEMENT GRANT APPLICATION CHECKLIST

Applicant Name: _____
Application Tracing Number: _____
Electronic Submission: _____ Paper Submission_____ Waiver Obtained: _____
Title I: _____ Title V: _____ Project Type: _____

Item	Applicant	Grants	Programs
1. Eligibility: (circle) Tribe Tribal Organization			
2. 501c(3) Non-Profit Organization			
3. Tribal Resolution:			
a. Final signed resolution			
b. Draft unsigned resolution			
4. Priority I Documentation (if applicable)			
5. Priority II Documentation (if applicable)			
6. Consortium Participation Documentation (if applic.)			
7. SF 424 Application for Federal Assistance			
8. SF 424A Budget—Non Construction			
9. SF 424B Assurances			
10. Disclosure of Lobbying Activities			
11. Abstract			
Project Narrative (14 Pages Maximum):			
a. Introduction and Need for Assistance			
b. Project Objective(s), Workplan & Consultants			
c. Project Evaluation			
d. Organizational Capabilities and Qualifications			
13. Categorical Budget & Budget Justification			
14. Multi-year Summary & Budget Justification:			
Year 1 Year 2 Year 3			
15. Appendices:			
a. Workplan			
b. Resumes			
c. Position Descriptions			
d. Consultant Scope of Work			
e. Indirect Cost Rate Agreement			

Item	Applicant	Grants	Programs
f. Organizational Chart (optional)	_____	_____	_____
g. FY 2008 TMG Checklist	_____	_____	_____

Applicant signature/Date: _____
IHS Grants Management Signature/Date: _____
IHS Program Office Signature/Date: _____

The Public Health Service (PHS) strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: March 7, 2007.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 07–2389 Filed 5–15–07; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5144–N–01]

Notice of Competition Advocate Designation Under the HUD Acquisition Regulation

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Notice of competition advocate designation.

SUMMARY: In accordance with HUD's acquisition regulations (HUDAR), this notice announces HUD's designation of a competition advocate. Under the Federal Acquisition Regulations (FAR), each agency designates a competition advocate whose responsibilities include, but are not limited to: Promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

DATES: *Effective Date:* January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, Assistant Chief Procurement Officer for Policy and Systems, Office of the Chief Procurement Officer, 451 Seventh Street, SW., Room 5276, Washington, DC 20410–3000, telephone (202) 708–0294. Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The uniform regulation for the procurement of supplies and services by federal departments and agencies, the FAR, was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation of authority effective October 6, 1998 (63 FR 54723) and the general authorization in FAR 1.301.

Under 48 CFR 2401.601–70, the Chief Procurement Officer is HUD's Senior Procurement Executive. In accordance with 48 CFR 2406.501, HUD's Senior Procurement Executive shall designate the Department's competition advocate by notice in the **Federal Register**. Therefore, the Chief Procurement Officer designates a Special Assistant to the Chief Procurement Officer as HUD's competition advocate.

This designation supersedes the previous designation of competition advocate published in the **Federal Register** on August 23, 1999 (64 FR 46109).

Dated: May 11, 2007.

Joseph A. Neurauter,

Chief Procurement Officer.

[FR Doc. E7–9434 Filed 5–15–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bayou Sauvage National Wildlife Refuge in South Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, intend to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents for Bayou Sauvage National Wildlife Refuge. We furnish this notice in compliance with our comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by June 15, 2007.

ADDRESSES: Send your comments or requests for more information to: Charlotte Parker, Natural Resource Planner, Southeast Louisiana National Wildlife Refuge Complex, 61389 Highway 434, Lacombe, Louisiana 70445; Telephone: 985/882–2000; or electronically to: *Charlotte_Parker@fws.gov.*

SUPPLEMENTARY INFORMATION: With this notice, we initiate the process for developing a comprehensive conservation plan for Bayou Sauvage National Wildlife Refuge in New Orleans, Louisiana.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In

addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

We establish each unit of the National Wildlife Refuge System with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these refuges. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of these important wildlife habitats, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for the management of Bayou Sauvage National Wildlife Refuge. We invite anyone interested to respond to the following two questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for Bayou Sauvage National Wildlife Refuge?

We have provided the above questions for your optional use; you are not required to provide information to us. Our Planning Team developed these questions to gather information about individual issues and ideas concerning this refuge. Our Planning Team will use comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at a public scoping meeting to be held in New Orleans, Louisiana, during the development phase of the plan. This event will be advertised through local media outlets. You may also submit comments anytime during the planning process by writing to the address in the **ADDRESSES** section. All information provided voluntarily by mail, phone, or at the public meeting becomes part of our official record (*i.e.*, names, addresses, letters of comment, input recorded during meeting).

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive on our environmental assessment become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA [40 CFR § 506.6(f)], and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments.

Bayou Sauvage Refuge was established in 1990. Consisting of 22,770 acres and situated within the city limits of New Orleans, it is the Nation's largest urban wildlife refuge. Objectives of the refuge are to: enhance populations of migratory, shore, and wading birds; encourage natural diversity of fish and wildlife species; protect threatened and endangered plants and animals; protect archaeological resources; provide for scientific research and environmental education with emphasis on wetlands; and provide opportunities for fish and wildlife-dependent recreation in an urban setting.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 7, 2007.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. E7–9405 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bond Swamp National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment for Bond Swamp National Wildlife Refuge in Bibb and Twiggs Counties, Georgia.

SUMMARY: The Fish and Wildlife Service intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment for Bond Swamp National Wildlife Refuge. This notice is furnished in compliance with the Service's comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, comments must be received by July 16, 2007.

ADDRESSES: Address comments, questions, and requests for more information to Carolyn Johnson, Deputy Project Leader, Piedmont National Wildlife Refuge, 718 Juliette Road, Roundoak, Georgia 31038; Telephone: 478/986–5441; or you may correspond with Ms. Johnson via the Internet at *Carolyn_Johnson@fws.gov.*

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. Public input into this planning process is essential.

Each unit of the National Wildlife Refuge System is established with specific purposes. These purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on the refuge. The planning process is a means for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

A comprehensive conservation planning process will be conducted that will provide opportunities for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. The Service invites anyone interested to respond to the following questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?
2. What improvements would you recommend for the Bond Swamp National Wildlife Refuge?

The above questions have been provided for your optional use. You are not required to provide any information. The Planning Team developed these questions to gather information about individual issues and ideas concerning the refuge. The Planning Team will use comments it receives as part of the planning process; however, it will not reference individual comments or directly respond to them.

Open house style meeting(s) will be held throughout the scoping phase of the comprehensive conservation plan development process. Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); and other appropriate Federal laws and regulations. All comments received become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and Service and Departmental policies and procedures.

Bond Swamp National Wildlife Refuge was established in 1989 to protect, maintain, and enhance the forested wetland ecosystem of the Ocmulgee River floodplain. The refuge consists of 6,500 acres situated along the fall line separating the Piedmont and Coastal Plains.

The refuge has a diversity of vegetation communities, including mixed hardwood-pine, bottomland hardwoods, tupelo gum swamp forests, creeks, tributaries, beaver swamps, and oxbow lakes. The refuge is rich in wildlife diversity, including white-tailed deer, wood ducks, black bears, alligators, wild turkey, a nesting pair of bald eagles, and excellent wintering habitat for waterfowl. Extensive bottomland hardwoods provide critical habitat for neotropical songbirds of concern, such as Swainson's warbler, wood thrush, prothonotary warbler, and yellow-billed cuckoo. The combination of warm weather and wet areas at Bond Swamp Refuge provides ideal conditions for a variety of reptile and amphibian species.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2007.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on May 11, 2007.

[FR Doc. E7–9404 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Muscatatuck National Wildlife Refuge, Jackson, Jennings and Monroe Counties, IN, Tamarac National Wildlife Refuge, Becker County, MN, Tamarac Wetland Management District, Beltrami, Cass, Clearwater, Hubbard and Koochiching Counties, MN, and Big Muddy National Wildlife Refuge Authorized Within the Twenty Counties That Lie Along the Missouri River From Kansas City to St. Louis, MO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and associated environmental documents for the Muscatatuck, Tamarac, and Big Muddy National Wildlife Refuges (NWRs) and Tamarac Wetland Management District (WMD). We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

In addition, the Service is inviting comments on archeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act.

Special mailings, newspaper articles, internet postings, and other media announcements will inform people of the opportunities for written comments.

ADDRESSES: Comments or requests for more information can be sent to the appropriate refuge at the following addresses:

1. Attention: Refuge Manager, Muscatatuck National Wildlife Refuge, 12985 East U.S. Hwy 50, Seymour, IN 47274.
2. Attention: Refuge Manager, Tamarac National Wildlife Refuge or Tamarac Wetland District, 35704 County Road 26, Rochert, MN 56578.
3. Attention: Refuge Manager, Big Muddy National Wildlife Refuge, 4200 New Haven Road, Columbia, MO 65201.

You may also find information on the CCP planning process and submit comments electronically on the planning Web site *http://www.fws.gov/midwest/planning* or you may e-mail comments to *r3planning@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Marc Webber, Muscatatuck NWR, 812–522–4352; Barbara Boyle, Tamarac NWR and WMD, 218–847–2641; or Tom Bell, Big Muddy NWR, 573–876–1826.

SUPPLEMENTARY INFORMATION: With this notice, we initiate the CCP for the Muscatatuck NWR with headquarters in Seymour, IN; the CCP for the Tamarac NWR and Tamarac WMD with headquarters in Rochert, MN; and the CCP for the Big Muddy NWR with headquarters in Columbia, MO.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. Land parcels managed by the Service within a Wetland Management District are also units of the National Wildlife Refuge System. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Each unit of the National Wildlife Refuge System, including each of these NWRs, is established with specific purposes. The Service uses these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these Refuges. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the Refuges' establishing purposes and the mission of the National Wildlife Refuge System.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment for the future management of the Muscatatuck NWR, Tamarac NWR and WMD, and Big Muddy NWR. We invite anyone interested to respond to the following two questions:

1. What issues do you want to see addressed in the CCP?

2. What improvements would you recommend for the refuges?

Responding to these two questions is optional; you are not required to provide information to us. Our Planning Team developed the questions to gather information about individual issues and ideas concerning these Refuges. Comments we receive will be used as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at open houses. You can obtain a schedule of the open house events by contacting the Refuge Managers listed in the **ADDRESSES** section of this notice.

The environmental review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 26, 2007.

Robyn Thorson,

Regional Director, Robyn Thorson, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E7–9384 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Laguna Cartagena National Wildlife Refuge, Boquerón, PR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, intend to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents for the Laguna Cartagena National Wildlife Refuge. We furnish this notice in compliance with our comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by June 15, 2007.

ADDRESSES: Send your comments or requests for more information to Ms. Susan Silander, Refuge Manager, Caribbean Islands National Wildlife Refuge Complex, P.O. Box 510, Boquerón, PR 00622; Telephone: 787/851–7258; or electronically to: *susan_silander@fws.gov.*

SUPPLEMENTARY INFORMATION: With this notice, we initiate the comprehensive conservation plan for Laguna Cartagena National Wildlife Refuge with headquarters in Boquerón, Puerto Rico.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

We establish each unit of the National Wildlife Refuge System with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on this refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for the management of the Laguna Cartagena National Wildlife Refuge in Boquerón, Puerto Rico. We invite anyone interested to respond to the following two questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for the Laguna Cartagena National Wildlife Refuge?

We have provided the above questions for your optional use; you are not required to provide information to us. Our Planning Team developed these questions to gather information about individual issues and ideas concerning this refuge. Our Planning Team will use comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at an open house and public scoping meetings during 2007, to identity issues to be addressed in the plan. These events will

be advertised through local media outlets. You may also submit comments anytime during the planning process by writing to the address in the **ADDRESSES** section. All information provided voluntarily by mail, phone, or at the public meetings becomes part of our official record (*i.e.*, names, addresses, letters of comment, input recorded during meeting).

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive on our environmental assessment become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA [40 CFR 1506.6(f)], and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments.

The Laguna Cartagena National Wildlife Refuge was established in 1989 through a lease agreement with the Commonwealth of Puerto Rico. The present lagoon is a remnant of what was once a large open expanse of water and one of the most important freshwater habitats for migrating waterfowl and aquatic birds in Puerto Rico. Due to agricultural practices, about 90 percent of the lagoon is covered with cattail. In addition to the lagoon, there are uplands that include pastureland, abandoned sugar cane fields, and 263 acres in the foothills of the Sierra Bermeja. The total area of the refuge is 1,059 acres. The refuge objectives are to restore and maintain this locally important wetland ecosystem for the benefit of endangered species and migratory birds. These issues and the objectives along with others identified during the scoping process will be addressed during the development of the Draft CCP/EA.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2007.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on May 11, 2007.

[FR Doc. E7–9403 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Energy Policy Act of 2005, Section 1813, Report to Congress

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of publication of report to Congress.

SUMMARY: Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109–58) requires the Department of the Interior and the Department of Energy (Departments) to jointly consult with stakeholders and conduct a study of issues related to energy rights-of-way (ROWs) on tribal lands. The Act further directs the Departments to submit a report to Congress on the findings of the study. The Report to Congress is available on the Section 1813 Web site (*http://1813.anl.gov*). This Web site will remain active until August 8, 2007.

FOR FURTHER INFORMATION CONTACT: Darryl Francois (DOI, Office of Indian Energy and Economic Development) at (202) 219–0740, or Kristen Ellis (DOE, Office of Congressional and Intergovernmental Affairs) at (202) 586–5810. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109–58) requires the Department of the Interior and the Department of Energy (Departments) to jointly conduct a study of issues regarding grants, expansions, and renewals of energy rights-of-way (ROWs) on tribal lands. Section 1813 also requires the Departments to consult with Indian tribes, the energy industry, appropriate governmental entities, and affected businesses and consumers in the course of the study. The Act further directs the Departments to submit a report to Congress on the findings of the study, including: (1) An analysis of historic rates of compensation paid for energy ROWs on tribal land; (2) Recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy ROWs on tribal land; (3) An assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy ROWs on tribal land; and (4) An analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy ROWs on tribal land.

The Departments held a number of public meetings to seek input and feedback from Indian tribes, the energy industry, appropriate governmental entities, and affected businesses and consumers. In addition the Departments held a number of government to government consultations with Indian tribes. The Departments released two draft reports and accepted comment about the content of both draft reports. This final Report to Congress reflects the Departments' response to the considered and substantial comments received. The Report to Congress is available on the Section 1813 Web site (*http://1813.anl.gov*) until August 8, 2007.

Dated: May 11, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–9431 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–96–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14865–B; AK–964–1410–HY]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Deloycheet, Incorporated. The lands are in the vicinity of Holy Cross, Alaska, and are located in:

Seward Meridian, Alaska

T. 24 N., R. 55 W.,
Secs. 16 and 17;
Sec. 18 and that portion of U.S. Survey No. 10183 formerly within Native allotment application AA–59647.
Containing approximately 1,636 acres.

T. 26 N., R. 55 W.,
Secs. 4 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 32, inclusive.
Containing 6,832.21 acres.

T. 25 N., R. 58 W.,
Secs. 2 to 6, inclusive;
Secs. 11 and 14;
Secs. 23, 24 and 25.
Containing 4,058.61.
Aggregating approximately 12,527 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Deloycheet, Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 15, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner Branch of Adjudication II.

[FR Doc. E7–9400 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–07–0777–XX]

New Mexico Resource Advisory Council, Notice of Call for Nominations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for vacant positions on the Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC). The RAC provides advice and recommendations to BLM on land use planning and management of the public lands within New Mexico. Public nominations will be considered until June 18, 2007.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of land administered by BLM. Section 309 of FLPMA directs the Secretary to select a 15-member, citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. There is one vacant position for the New Mexico RAC in Category 1 representing any holders of Federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation.

There are two vacancies in Category 2 representing nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups.

Individuals may nominate themselves or others. Nominees must be residents of New Mexico. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. Letters of reference must accompany all nominations from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: May 10, 2007.

Linda S.C. Rundell,

State Director.

[FR Doc. E7–9385 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Notice of Availability (NOA) of Final Programmatic Environmental Assessment (EA) for the Coastal Impact Assistance Program (CIAP)

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: NOA of Programmatic Environmental Assessment and Finding of No Significant Impact (FONSI).

SUMMARY: The Minerals Management Service (MMS) has prepared a programmatic EA and a FONSI for the implementation of the CIAP. This EA was prepared to assist agency planning and decisionmaking in future assessment of individual projects (40 CFR 1501.3(b)). The programmatic EA is available on the MMS Web site at: *http://www.mms.gov/offshore/CIAPmain.htm*.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 381 Elden Street, Mail Stop 4042, Herndon, Virginia, 20170. Telephone: (703) 787–1660, *jf.bennett@mms.gov*.

Dated: April 13, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–9337 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf Official Protraction Diagrams and Leasing Maps

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of revised North American Datum of 1927 (NAD 27) Outer Continental Shelf Official Protraction Diagrams and Leasing Maps.

SUMMARY: Notice is hereby given that effective with this publication, the following NAD 27-based Outer Continental Shelf Official Protraction Diagrams and Leasing Maps last revised on the date indicated are available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. Copies are also available for download at *http://www.mms.gov/ld/maps.htm*. The Minerals Management Service in accordance with its authority and responsibility under Title 43, Code of Federal Regulations, is updating the basic record used for the description of mineral and oil and gas lease sales in the geographic areas they represent.

Outer Continental Shelf Official Protraction Diagrams in the Western and Central Gulf of Mexico Planning Areas

Description/Date

NG15–02 (Garden Banks)—February 28, 2007

NG15–05 (Keathley Canyon)—February 28, 2007

NG15–08 (Sigsbee Escarpment)—February 28, 2007
LA1A (West Cameron Area, West Addition)—February 28, 2007
LA1B (West Cameron Area, South Addition)—February 28, 2007
LA12 (Sabine Pass Area)—February 28, 2007

FOR FURTHER INFORMATION CONTACT: Copies of Official Protraction Diagrams (OPDs) and Leasing Maps are $2.00 each. These may be purchased from the Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504)736–2519 or (800) 200–GULF.

SUPPLEMENTARY INFORMATION: Official Protraction Diagrams and Leasing Maps may be obtained in two digital formats: gra files for use in ARC/INFO and *.pdf* files for viewing and printing in Adobe Acrobat.

Dated: April 12, 2007.

Robert P. LaBelle,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. E7–9344 Filed 5–15–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the Annual Refiling Survey (ARS) forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 16, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program, formerly known as the ES–202 Program, is a Federal/State cooperative effort which compiles monthly employment data, quarterly wages data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Workforce Agencies (SWAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the longitudinal QCEW data.

To ensure the continued accuracy of these data, the information supplied by employers must be periodically verified and updated. For this purpose, the Annual Refiling Survey (ARS) is used in conjunction with the UI tax reporting system in each State. The information collected on the ARS is used to review the existing industry code assigned to each establishment as well as the physical location of the business establishment. As a result, changes in the industrial and geographical compositions of our economy are captured in a timely manner and reflected in the BLS statistical programs.

The ARS also asks employers to identify new locations in the State. If these employers meet QCEW program reporting criteria, then a Multiple Worksite Report (MWR) is mailed to the employer requesting employment and wages for each worksite each quarter. Thus, the ARS is also used to identify new potential MWR-eligible employers.

II. Current Action

While the primary purpose of the ARS is to verify or to correct the North American Industry Classification System (NAICS) code assigned to establishments, there are other important purposes of the ARS. The ARS seeks accurate mailing and physical location addresses of establishments as well as geographic codes such as county and township (independent city, parish, or island in some States).

Once every three years, the SWAs survey employers that are covered by the State's UI laws to ensure that State records correctly reflect the business activities and locations of those employers. States send an ARS form to approximately one-third of their businesses each year, surveying the entire universe of covered businesses over a three-year cycle. The selection criterion for surveying establishments is based on the nine-digit Federal Employer Identification Number of the respondent.

The ARS remains largely a mail survey, although steps have been taken to reduce the amount of paperwork involved in responding to the survey. For example, BLS staff review selected, large multi-worksite national employers rather than surveying these employers with traditional ARS forms. This central review significantly reduces postage costs incurred by our State partners in sending ARS forms. It also reduces respondent burden, as the selected employers do not have to submit ARS forms.

Single-worksite employers have been identified as potential users of the BLS-developed Touchtone Response System (TRS). Employers can use the TRS if they meet certain conditions and there are no changes to specific data elements based upon the employer's review. The TRS reduces respondent burden because it is quick, free, and convenient. It also allows respondents to help BLS reduce survey costs because they do not return the form in the business reply envelope provided. All States are now using the TRS in conducting the ARS.

Another recent initiative to reduce the costs associated with the ARS is the use of a private contractor to handle various administrative aspects of the survey. This initiative is called the Centralized Annual Refiling Survey (CARS). Under CARS, BLS effectively utilizes the commercial advantages related to printing, stuffing, and mailing large volumes of survey forms.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Annual Refiling Survey (ARS).

OMB Number: 1220–0032.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and farms.

Frequency: Annually.

Form No.	Total respondents	Frequency	Total responses	Average time per response (minutes)	Total burden (hours)
BLS 3023–(NVS)	1,530,531	Once	1,530,531	5	127,544
BLS 3023–(NVM)	40,423	Once	40,423	15	10,106
BLS 3023–(NCA)	219,670	Once	219,670	10	36,612
Totals	1,790,624		1,790,624		174,262

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 10th day of May, 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–9375 Filed 5–15–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is used by customers/researchers for ordering reproductions of NARA's motion picture, audio, and video holdings that are housed in the Washington, DC area of the National Archives and Records Administration. The second information collection is the Microfilm Rental Order Form, NA Form 14127, used by customers/researchers for renting roll(s) of a microfilm publication. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 16, 2007 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Item Approval Request List.
OMB number: 3095–0025.
Agency form number: NA Form 14110 and 14110A.
Type of review: Regular.
Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.
Estimated number of respondents: 2,816.
Estimated time per response: 15 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 704 hours.
Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. NARA uses the Item Approval Request List form to track reproduction requests and to provide information for customers and vendors.

2. *Title:* Microfilm Rental Order Form.
OMB number: 3095–0059.
Agency form number: NA Form 14127.
Type of review: Regular.
Affected public: Individuals or households.
Estimated number of respondents: 5,200.
Estimated time per response: 10 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 867 hours.
Abstract: The NARA microfilm publications provide ready access to

records for research in a variety of fields including history, economics, political science, law, and genealogy. NARA emphasizes microfilming groups of records relating to the same general subject or to a specific geographic area. For example, the decennial population censuses from 1790 to 1930 and their related indexes are available on microfilm. Census records constitute the vast majority of microfilmed records available currently through the rental program.

Dated: May 9, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–9380 Filed 5–15–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 15, 2007 (Note that the new time period for requesting copies has changed from 45 to 30 days after publication). Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

FAX: 301–837–3698

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note that the new time period for requesting copies has changed from 45 to 30 days after publication):

1. Department of the Air Force, Agency-wide (N1–AFU–03–11, 41 items, 40 temporary items). Records relating to management of personnel and other resources for aviation and parachuting operations. Included are electronic data, aeronautical orders, incentive pay entitlement records, other military pay records, training records, mission accomplishment reports, sonic boom records, aircrew qualification certificates, waivers of flying or parachuting requirements, and flight, jump, and flight evaluation record folders. Proposed for permanent retention are recordkeeping copies of final individual flight records.

2. Department of the Army, Agency-wide, (N1–AU–06–14, 3 items, 3 temporary items). Records relating to the training, authorization and certification of Army law enforcement personnel carrying firearms. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Defense, Office of the Secretary of Defense, (N1–330–07–2, 1 item, 1 temporary item). Master file associated with an electronic information system used to track real and personal property. Data includes item authorizations, document registers, parts and equipment catalog information, hand receipt information, accounting data, maintenance and utilization information, and user history data.

4. Department of the Interior, National Park Service (N1–79–06–2, 8 items, 4 temporary items). Records of the Electronic Technical Information Center system, including metadata files covering circulation information and storage and disposition of records, and copies of source documents used to create microfilm versions. Also

included are images of source documents in paper and electronic formats. Proposed for permanent retention are the master image files, optical character recognition text files, metadata files describing source documents and related audio-visual records, and system documentation.

5. Department of Justice, Bureau of Prisons (N1–129–06–3, 7 items, 5 temporary items). Files relating to hazardous materials maintained by the Bureau of Prisons. Proposed for permanent retention are recordkeeping copies of records documenting Bureau of Prisons landfills.

6. Department of Justice, Bureau of Prisons (N1–129–07–1, 3 items, 3 temporary items). Records pertaining to public comments, federal regulation documents, electronic federal regulation development records, and electronic rule documents in the eRulemaking System. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Justice, Bureau of Prisons (N1–129–07–2, 3 items, 3 temporary items). Regional Administrator's records including correspondence and reference files, program reports, statistical summaries, and working files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Justice, Bureau of Prisons (N1–129–07–4, 1 item, 1 temporary item). Regional Community Corrections Administrator records including correspondence and monitoring files, and contractor files relating to housing, special services, treatment summaries, billings, treatment reports and plans, and release information of inmates.

9. Department of Justice, Bureau of Prisons (N1–129–07–5, 5 items, 5 temporary items). Criminal files relating to U.S. Attorney's investigations and inquiries including witness statements, custody documentation and other documentation related to inmates while in Federal custody. Also included are inputs, outputs, and data associated with an electronic information system used to track legal inquiries. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of Justice, Bureau of Prisons (N1–129–07–6, 2 items, 2 temporary items). Records relating to regional correctional programs including special designation requests, special supervision, destructive groups, and threats to government officials. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

11. Department of Justice, Bureau of Prisons (N1–129–07–7, 3 items, 3 temporary items). Regional Counsel records including legal research, subject files, pleading files, and working files of proposed updated policies. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

12. Department of Justice, Bureau of Prisons (N1–129–07–8, 1 item, 1 temporary item). Regional Crisis Support Program Team Certification files, including certification accounting files, training records, and staff and roster records used to implement local Crisis Support Team programs. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of Justice, Civil Division (N1–60–05–13, 4 items, 2 temporary items). Inputs and outputs of the case management system. Proposed for permanent retention are the master file and system documentation.

14. Department of Navy, United States Marine Corps, Agency-wide (N1–NU–06–7, 5 items, 2 temporary items). Records relating to awards granted or denied, documented in the Awards Processing System. Records are paper and electronic data input files, including legacy systems migrated, supporting documents to grant or deny the award, and paper print outs. Proposed for permanent retention are master files and system documentation.

15. Department of Transportation, Federal Railroad Administration (N1–399–07–13, 2 items, 1 temporary item). Copies of final deliverables and reports relating to railroad safety and rail transportation policy. Proposed for permanent retention are recordkeeping copies of programmatic or mission-related final deliverables and reports. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping media.

16. Department of Transportation, Federal Railroad Administration (N1–399–07–14, 1 item. 1 temporary item). Office of Railroad Development files relating to the publication of notices in the **Federal Register** including drafts and final notices, tear sheets, newspaper clippings, and citations and abstracts of articles. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

17. Department of the Treasury, Internal Revenue Service (N1–58–07–5, 4 items, 4 temporary items). Inputs, outputs, master file, and system documentation of the Custodial Audit Support Tracking System which tracks unpaid assessments used for Government Accountability Office audits.

18. Department of Veterans Affairs, Veterans Health Administration (N1–15–07–3, 20 items, 17 temporary items). Records created by the Office of Research Oversight relating to matters of compliance and assurance pertaining to medical research involving human subjects and, laboratory animals, research safety and security issues, and research impropriety and misconduct. Included are assurance files, case files, compliance review decisions and supporting documents, outreach materials, quality assurance records, reference documents, and work papers. Proposed for permanent retention are recordkeeping copies of briefing records, annual reports to Congress, and policy precedent records.

19. Federal Maritime Commission (N1–358–07–1, 11 items, 11 temporary items). Records maintained by the Bureau of Trade Analysis documenting shipping service contracts and arrangements. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

20. Library of Congress, Copyright Office (N1–297–07–1, 1 item, 1 temporary item). Notices of judicial actions and decisions on copyright cases, including Form AO121.

21. National Archives and Records Administration, Agency-wide (N1–64–07–4, 1 item, 1 temporary item). Original documentation of travel and miscellaneous expenses receipt files that support authorization and reimbursements made through an electronic travel administration system. Included are lodging and common carrier receipts, vehicle rental receipts, and other documentation of expenses.

22. Small Business Administration, Executive Secretariat Office (N1–309–07–1, 4 items, 1 temporary item). Inputs associated with an electronic information system used to record, route and track all incoming and outgoing correspondence to the Administrator, Deputy Administrator, Chief of Staff, and other program and field offices. Proposed for permanent retention are the master file, outputs, and system documentation.

Dated: May 10, 2007.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E7–9381 Filed 5–15–07; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Draft Environmental Impact Statement and Draft Conformity Determination for the Proposed Federated Indians of the Graton Rancheria Casino and Hotel Project, Sonoma, CA

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of comment period extension.

SUMMARY: This notice extends the comment period for the Federated Indians of the Graton Rancheria's Draft Environmental Impact Statement (DEIS) for a proposed casino and hotel project/action to be located in Sonoma, California. Notice of the availability of the DEIS and Draft Conformity Determination were published in the **Federal Register** on March 9, 2007 (72 FR 10790).

DATES: The comment period for the DEIS is extended from May 14, 2007, until June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Brad Mehaffy, NEPA Compliance Officer, National Indian Gaming Commission at (202) 632–7003 (not a toll-free number).

Dated: May 9, 2007.

Philip N. Hogen,

Chairman.

[FR Doc. 07–2399 Filed 5–15–07; 8:45 am]

BILLING CODE 7565–07–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: June 5, 2007, 8:30 a.m.—5:30 p.m. and June 6, 2007, 8:30 a.m.—2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235 S, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8040, *mtolbert@nsf.gov.*

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Tuesday, June 5, 2007

Welcome and Opening Statement by the CEOSE Chair Introductions

Presentations and Discussions:

- Understanding Interventions That Encourage Minorities to Pursue Research Careers
- The Transformation of CEOSE
- National Science Foundation Broader Impacts Criterion
- Strategic Planning and Broadening Participation
- CEOSE Status Reports
  - Plans for a Minisymposium on Persons with Disabilities
  - Conversations with Representatives of Ten Federal Agencies
  - CEOSE 2006 Biennial Report to Congress
  - Strategic Planning for CEOSE

Wednesday, June 6, 2007

Opening Statement by the New CEOSE Chair Presentations/Discussions:

- Conversations with Selected NSF Assistant Directors
- Discussion with the Director of the National Science Foundation
- Reports by CEOSE Liaisons to National Science Foundation Advisory Committees
- Deliberations on Key Areas of Focus in the Future, Recommendations, and Action Items

Completion of Unfinished Business.

Dated: May 11, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–9383 Filed 5–15–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Application To Amend a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b)(1) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an amendment to an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications and license amendments involving exports of a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or facilities to be exported. The information concerning the application follows.

NRC Application To Amend a License To Export a Utilization Facility

DESCRIPTION OF MATERIAL

Name of applicant; date of application; date received; Application No.; Docket No.	Description of facility	End use	Country of destination
Westinghouse Electric Company; April 16, 2007; April 17, 2007; XR169/01; 11005472.	Amendment to change one of the ultimate consignees for two AP1000 pressurized water reactors from the Yang Jiang site to the Haiyang site and to revise the list of U.S. parties to the export.	Electricity generation ...	People's Republic of China.

For the Nuclear Regulatory Commission.

Dated this 8th day of May 2007 at Rockville, Maryland.

Janice Dunn Lee,

Director, Office of International Programs.

[FR Doc. E7–9414 Filed 5–15–07; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Termination of Single-Employer Plans, Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval

SUMMARY: Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget (''OMB'') extend approval (with modifications), under the Paperwork Reduction Act of 1995, of a collection of information in its regulations on Termination of Single-Employer Plans and Missing Participants, and implementing forms and instructions (OMB control number 1212–0036; expires September 30, 2007). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 16, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- Follow the Web site instructions for submitting comments.
- *E-mail: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026

Comments received will be posted to *http://www.pbgc.gov*.

Copies of the collection of information may be obtained without charge by writing to PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulations and forms and instructions relating to this collection of information may be accessed on PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and PBGC's regulation on missing participants (29 CFR part 4050). PBGC is making clarifying, simplifying, editorial, and other changes to the existing forms and instructions.

PBGC estimates that 1,175 plan administrators will be subject to the collection of information requirements in PBGC's regulations on termination and missing participants and implementing forms and instructions each year, and that the total annual burden of complying with these requirements is 2,175 hours and $2,886,003. (Much of the work associated with terminating a plan is performed for purposes other than meeting these requirements.)

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 10th day of May, 2007.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E7–9397 Filed 5–15–07; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 3a–4; SEC File No. 270–401; OMB Control No. 3235–0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collections of information discussed below.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include ''wrap fee'' and ''mutual fund wrap'' programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. Some of

these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a–4 are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a–4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) annually must contact the client to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) also must notify the client quarterly, in writing, to contact the sponsor (or the designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.[4]

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

Rule 3a–4 is intended primarily to provide guidance regarding the status of investment advisory programs under the Investment Company Act. The rule is not intended to create a presumption about a program that is not operated according to the rule's guidelines.

The requirement that the sponsor (or its designee) obtain information about the client's financial situation and investment objectives when the account is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the portfolio manager to evaluate the client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure the client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that approximately 64 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a–4.[5] Although it is impossible to determine the exact number of clients that participate in investment advisory programs, an estimate can be made by dividing total assets by the industry average account size ($345.5 billion[6] divided by $126,202),[7] for a total of 2,737,675 clients. Additionally, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 2003 through 2006, by the average account size ($57.7 billion divided by $126,202), for an average annual number of new accounts of 457,204.[8]

The Commission staff estimates that each program sponsor spends approximately 1.25 hours annually in preparing, conducting and/or reviewing interviews for each new client; 30 minutes annually preparing, conducting and/or reviewing annual interviews for each continuing client; and one hour preparing and mailing quarterly account activity statements, including the notice to update information to each client. Based on the foregoing, the Commission staff therefore estimates the total annual burden of the rule's paperwork requirements for all program sponsors to be 4,449,415.5 hours. This represents a decrease of 2,063,087 hours from the prior estimate of 6,512,502.5 hours. The decrease results from a change in the method of computation for the number of clients that participate in these investment advisory programs. Previously, we have computed the number of clients based on the minimum account requirement for participation in these programs. For this estimate we computed the number of clients based on the industry average account size in these programs resulting in a decrease in the estimated number of clients in these investment advisory programs.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's safe harbor. Nevertheless, rule 3a-4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) (62 FR 15098 (Mar. 31,1997)) (''Adopting Release''). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. See 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term ''sponsor'' refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

[5] These estimates are based on statistical information on wrap fee and mutual fund wrap programs provided by Cerulli Associates in 2003. We request comment on whether the number of wrap programs and program sponsors has changed.

[6] See Cerulli Associates, The Cerulli Edge: Managed Accounts Edition, Advisors Issue 10 (3d quarter 2006).

[7] Id. at 13.

[8] The requirement for initial client contact and evaluation is not a recurring obligation, but only occurs when the account is opened. The estimated annual hourly burden is based on the average number of new accounts opened each year.

the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2007.

Florence E. Hartmon,

Deputy Secretary.

[FR Doc. E7–9363 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–5; SEC File No. 270–172; OMB Control No. 3235–0169.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved collection of information discussed below.

Form N–5 (17 CFR 239.24 and 274.5)—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements to the Securities Act and Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is one and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 352 hours. Providing the information on Form N–5 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9367 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–8A; File No. 270–135; OMB Control No. 3235–0175.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Form N–8A (17 CFR 274.10)—Notification of Registration of Investment Companies Form N–8A is the form that investment companies file to notify the Commission of the existence of active investment companies. After an investment company has filed its notification of registration under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act''), the company is then subject to the provisions of the 1940 Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, if it is a management company, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing simultaneously its notification of registration and registration statement, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

The Commission uses the information provided in the notification on Form N–8A to determine the existence of active investment companies and to enable the Commission to administer the provisions of the 1940 Act with respect to those companies. Each year approximately 156 investment companies file a notification on Form N–8A, which is required to be filed only once by an investment company. The Commission estimates that preparing Form N–8A requires an investment

company to spend approximately 1 hour so that the total burden of preparing Form N–8A for all affected investment companies is 156 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form N–8A is mandatory. The information provided on Form N–8A is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or email to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9368 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–8B–2; SEC File No. 270–186; OMB Control No. 3235–0186.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Form N–8B–2 (17 CFR 274.12) is the form used by unit investment trusts (''UITs'') that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the trustee, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately one initial filing on Form N–8B–2 and 9 post-effective amendment filings to the Form annually. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 44 hours in preparing and filing the Form and that the total hour burden for all initial Form N–8B–2 filings would be 44 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 16 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the Form would be 144 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendments filings to the Form, the Commission estimates that the total annual burden hours for all registrants on Form N–8B–2 would be 188. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–2 is mandatory. The information provided on Form N–8B–2 will not be kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9369 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17j–1; SEC File No. 270–239; OMB Control No. 3235–0224.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collection of information discussed below.

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (''personal investment activities''). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Beginning in the early 1960s, Congress and the Securities and Exchange Commission (''Commission'') sought to devise a regulatory scheme to effectively address these potential conflicts. These efforts culminated in the addition of section 17(j) to the Investment Company Act of 1940 (the ''Investment Company Act'') (15 U.S.C. 80a–17(j)) in 1970 and the adoption by the Commission of rule 17j–1 (17 CFR 270.17j–1) in 1980.[1] The Commission proposed amendments to rule 17j–1 in 1995 in response to recommendations made in the first detailed study of fund policies concerning personal investment activities by the Commission's Division of Investment Management since rule 17j–1 was adopted. Amendments to rule

[1] Prevention of Certain Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

17j–1, which were adopted in 1999, enhanced fund oversight of personal investment activities and the board's role in carrying out that oversight.[2] Additional amendments to rule 17j–1 were made in 2004, conforming rule 17j–1 to rule 204A–1 under the Investment Advisers Act of 1940 (15 U.S.C. 80b), avoiding duplicative reporting, and modifying certain definitions and time restrictions.[3]

Section 17(j) makes it unlawful for persons affiliated with a registered investment company (''fund'') or with the fund's investment adviser or principal underwriter (each a ''17j–1 organization''), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and ''Access Persons'' [4] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,[5] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons from violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[6] to file: (i) Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the access person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

We estimate that annually there are approximately 75,363 respondents under rule 17j–1, of which 5,363 are rule 17j–1 organizations and 70,000 are Access Persons. In the aggregate, these respondents make approximately 113,970 responses annually. We estimate that the total annual burden of complying with the information collection requirements in rule 17j–1 is approximately 169,950 hours. This hour burden represents time spent by Access Persons that must file initial and annual holdings reports and quarterly transaction reports, investment personnel that must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement, and the responsibilities of Rule 17j–1 organizations arising from information collection requirements under rule 17j–1. These include notifying Access Persons of their reporting obligations, preparing an annual rule 17j–1 report and certification for the board, documenting their approval or rejection of IPO and private placement requests, maintaining annual rule 17j–1 records, maintaining electronic reporting and recordkeeping systems, amending their codes of ethics

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821–01 (Aug. 27, 1999)).

[3] Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (66 FR 41696 (Jul. 9, 2004)).

[4] Rule 17j–1(a)(1) defines an ''access person'' as ''Any advisory person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.'' The definition of Access Person also includes ''Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.'' Rule 17j–1(a)(1).

[5] A ''Covered Security'' is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j–1(a)(4).

[6] Rule 17j–1(d)(2) contains the following exceptions: (i) An Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise not need to report and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report,; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act; and (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j–1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j–1 organization.

as necessary, and, for new fund complexes, adopting a code of ethics.

In addition, we estimate that there is an additional annual cost burden of approximately $2,000 per fund complex, for a total of $1,100,000, associated with complying with the information collection requirements in rule 17j–1, aside from the cost of the burden hours discussed above.[7] This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j–1 recordkeeping.

These burden hour and cost estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[8]

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, VA, 22312; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9370 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

[7] The cost burden associated with filing of new and amended codes of ethics on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) is included in the Paperwork Reduction Act estimates for the relevant forms to which these codes must be appended.

[8] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c)).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 19b–5 and Form PILOT; SEC File No. 270–448; OMB Control No. 3235–0507.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19b–5 (17 CFR 240.19b–5) provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Securities Exchange Act of 1934 (''Act'') to self-regulatory organizations (''SROs'') wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of the pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Act in order to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5.

The respondents to the collection of information are SROs, as defined by the Act, including national securities exchanges and national securities associations.

Six respondents file an average total of 6 initial reports (for a 144 hour estimated annual burden), 24 quarterly reports (for a 72 hour estimated annual burden), and 12 amendments per year (for a 36 hour estimated annual burden), with an estimated total annual response burden of 252 hours. At an average hourly cost of $51.71, the aggregate related cost of compliance with Rule 19b–5 for all respondents is $13,030 per year (252 burden hours multiplied by $51.71/hour = $13,030).

Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: May 9, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9372 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15a–6; SEC File No. 270–0329; OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities.

It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. At an average cost per hour of approximately $100, the resultant total cost of compliance for the respondents is $600,000 per year (2,000 entities × 3 hours/entity × $100/hour = $600,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 60 days of this notice.

Dated: May 10, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9412 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55733; File No. SR–Amex–2007–34]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Amendments to Section 107 of the *Company Guide*

May 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (1) Sections 107A(b) and 107D(a) of the Amex *Company Guide* to provide an exception to the minimum public distribution requirement of one million units for issuances traded in thousand dollar denominations, and (2) Sections 107A(b), 107C(a) and 107D(a) of the Amex *Company Guide* to provide an exception to the 400 public shareholder requirement for securities that are redeemable at the option of the holders thereof on at least a weekly basis. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *www.amex.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 107 of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants (''Section 107 Securities'').[3] The general listing criteria relating to issuers and issuances are set forth in Section 107A of the Company Guide. In connection with each potential listing of Section 107 Securities, the Exchange evaluates each security and issuance against the following criteria in Section 107A (and correspondingly in Sections 107B, 107C,[4] 107D, and 107E): (1) A principal amount/aggregate market value of $4 million or greater, and (2) a minimum public distribution requirement of one million trading units with a minimum of 400 public shareholders, except that, if traded in thousand dollar denominations, then no minimum number of holders. In addition, the listing criteria also requires that the issuer must have assets in excess of $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer who is unable to satisfy the earnings criteria stated in Section 101 of the *Company Guide*, the Exchange will require the issuer to have the following: (a) Assets in excess of $200 million and stockholders' equity of

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29) (approving the listing guidelines under Section 107 for new securities not otherwise covered under existing sections of the *Company Guide*).

[4] The minimum public distribution requirement for Index-Linked Exchangeable Notes set forth in Section 107C of the Amex *Company Guide* is 150,000 notes rather than one million trading units.

at least $10 million; or (b) assets in excess of $100 million and stockholders' equity of at least $20 million.

Minimum Public Distribution

The first part of the proposal codifies an exception to Sections 107A(b) and 107D(a) of the Amex *Company Guide* so that certain issuances of Section 107 Securities may be listed even though the minimum public distribution requirement of one million units is not met. This exception, however, is conditioned on whether or not the issuance is traded in thousand dollar denominations. Sections 107A (General Criteria) and 107D (Index-Linked Securities) currently require a minimum public distribution requirement of one million trading units and a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders. Amex notes that, without the exception to the one million unit minimum public distribution requirement, the Exchange would be unable to list certain Section 107 Securities in thousand dollar denominations having a market value of less than $1 billion. Amex believes the proposed exception to be a reasonable accommodation for those issuances in thousand dollar denominations. Accordingly, the proposal amends the rule text of Section 107A(b) and 107D(a) so that the minimum public distribution and minimum public shareholders requirements will not be applicable to an issue traded in thousand dollar denominations.

Minimum Public Shareholders

The purpose of the second part of the proposal is to provide an exception to Sections 107A(b), 107C(a), and 107D(a) of the Amex *Company Guide* so that Section 107 Securities may be listed even though there may be less than 400 public shareholders at the time of listing.[5] This exception will be conditioned on whether the particular issue provides for the redemption of securities at the option of the holders on at least a weekly basis. Therefore, the revision to Sections 107A(b), 107C(a), and 107D(a) will provide that the minimum public shareholders requirement will not apply if the securities are redeemable at the option of the holders thereof on at least a weekly basis.

Over the past several years, the Exchange has added generic listing standards in Section 107 of the *Company Guide* for Equity Linked Term Notes, Index-Linked Exchangeable Notes, Index-Linked Securities, and Trust Certificate Securities. These requirements are set forth in Sections 107B,[6] 107C, 107D,[7] and 107E[8] of the Amex *Company Guide*, respectively. Currently, for each issuance of the foregoing Section 107 Securities, there must be a minimum of 400 public shareholders, except when the issue is traded in thousand dollar denominations. The Exchange submits that an additional exception to the 400 holder requirement is appropriate for certain securities which provide for redemption at the option of the holders on at least a weekly basis.

The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of Section 107 Securities and the performance of the underlying asset, such as a single security or basket of securities and/or securities index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to redeem such securities for their full value. In addition, in the case of certain Section 107 Securities with a weekly redemption feature, the issuer may have the ability to issue new securities from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. The Exchange believes that this provides a ready supply of new securities, thereby reducing the potential that Section 107 Security market prices will be affected by a scarcity of available securities. In addition, the ability to issue new securities may assist in maintaining a strong correlation between the market price and indicative value, based largely on potential arbitrage opportunities that should mitigate the effect of price differentials.

Amex believes that the ability to list certain Section 107 Securities with these characteristics without any specific requirements as to the number of holders is important to the successful listing of such securities. Issuers issuing these types of Section 107 Securities generally do not intend to do so by way of an underwritten offering, but instead, initially distribute the securities similar to the manner in which exchange-traded funds or ''ETFs'' are brought to market. In the case of an ETF, shares are initially launched or distributed without a significant distribution event, with the share float increasing over time as securities in creation unit size are issued from the issuer at net asset value. The Exchange states that, because of market dynamics and the purchasing behavior of investors, it is difficult for an issuer to be able to guarantee a sufficient number of public shareholders or investors on the date of listing in order to meet the 400 shareholders requirement. However, the Exchange believes that this difficulty in ensuring 400 shareholders on the listing date is not indicative of a lack of liquidity and/or adequate distribution of the securities. Accordingly, the Exchange submits that the existence of a weekly redemption option justifies this limited exception to the 400 public shareholder requirement.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] A revision to Section 107A(b) of the Amex *Company Guide* will also affect Sections 107B and 107E relating to equity linked term notes and trust certificate securities, respectively, because these provisions refer to Section 107A for purposes of meeting the ''General Criteria.''

[6] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR–Amex–92–42) (approving the listing and trading of Equity Linked Term Notes). *See also* Securities Exchange Act Release No. 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR–Amex–2002–110) (increasing the maximum number of equity securities permitted to be linked to an Equity Linked Term Note); Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR–Amex–99–42) (revising Section 107B of the *Company Guide*).

[7] *See* Securities Exchange Act Release No. 51258 (February 25, 2005), 70 FR 10700 (March 4, 2005) (SR–Amex–2005–001) (adopting generic listing standards for Index-Linked Securities).

[8] *See* Securities Exchange Act Release No. 50355 (September 13, 2004), 69 FR 56252 (September 20, 2004) (SR–Amex–2004–23) (approving generic listing standards for Trust Certificate Securities).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–34 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–34 and should be submitted on or before June 6, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that this proposal should benefit investors by providing an exception to the minimum public distribution requirements for certain Section 107 Securities issued and traded in thousand dollar denominations and providing an exception to the 400 public shareholder requirement for Section 107 Securities that are redeemable at the option of the holders thereof on at least a weekly basis. The Commission believes that these exceptions are reasonable and should allow for the listing and trading of certain Section 107 Securities that would otherwise not be able to be listed and traded on the Exchange.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has previously approved minimum public distribution and minimum public shareholder requirements that are substantially similar to Amex's proposal and found that such requirements were consistent with the Act.[13] The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the application of the proposed exceptions to the minimum public distribution and minimum public shareholder requirements. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such securities.

[11] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release No. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR–NYSE–2007–27).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2007–34), as modified by Amendment No.1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9364 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55734; File No. SR–ISE–2007–22]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Split Prices

May 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. On April 20, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rule governing ''Split Prices.'' Specifically, the Exchange proposes to provide for executions in its Block, Facilitation and Solicitation Mechanisms at half-penny prices for certain options classes included in the penny pilot program.[3] The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *www.iseoptions.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62) (''Penny Pilot Order'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rule governing ''Split Prices.'' [4] Specifically, the Exchange proposes to provide for executions in its Block, Facilitation and Solicitation Mechanisms at half-penny prices for certain options classes included in the penny pilot program. The Exchange's rule governing Split Prices was previously approved by the Commission.[5] Pursuant to the Commission's approval, the Exchange currently provides for such ''Split Prices'' in options quoted in standard $.05 and $.10 increments.

On January 26, 2007, the Exchange, along with the other options exchanges, commenced a six-month pilot program to quote certain options classes in penny increments.[6] The penny pilot rules adopted by the Exchange specifically state that Split Prices do not apply to options trading in penny increments. At the time ISE adopted the penny pilot rules, the Exchange believed that being able to place orders and responses in the Block, Facilitation and Solicitation Mechanisms in penny increments would give its members sufficient pricing flexibility. However, based on its experience with the penny pilot thus far, the Exchange believes that the same competitive pressure that led to Split Prices in standard increments has arisen in the penny pilot options. Specifically, the Exchange stated that it has seen floor-based exchanges print large blocks at two prices, one-cent apart, effectively providing for a half-penny block print. For competitive reasons, and to allow its members the same pricing flexibility that floor-based exchanges appear to be providing to their members, the ISE proposes to extend Split Prices to options classes included in the penny pilot program. The Exchange also represents that the Options Clearing Corporation will continue to accept and clear trades at sub-penny prices and that orders that are on the ISE book will be protected and executed at the midpoint prices.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide additional pricing flexibility in penny pilot options and allow the Exchange to compete more effectively with floor-based exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2007–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2007–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2007–22 and should be submitted on or before June 6, 2007.

[4] *See* Supplementary Material .06 to ISE Rule 716.

[5] *See* Securities Exchange Act Release No. 51666 (May 9, 2005), 70 FR 25631 (May 13, 2005) (SR–ISE–2003–07).

[6] *See* Penny Pilot Order, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9365 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55737; File No. SR–NASD–2006–124]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment Nos. 1 and 2 to, and Order Granting Accelerated Approval of, a Proposed Rule Change as Modified by Amendment Nos. 1 and 2 To Require the Provision of Certain Information About the Securities Investor Protection Corporation to Customers

May 10, 2007.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that the National Association of Securities Dealers, Inc. (''NASD'') has filed Amendment Nos. 1 and 2 to the proposed rule change, which, as amended, would adopt proposed NASD Rule 2342 to require NASD members, except those excluded from membership in the Securities Investor Protection Corporation (''SIPC'') or who sell only investments ineligible for SIPC protection, to provide new customers, and all customers annually, with certain information about SIPC. This order provides notice of and solicits comments from interested persons on the proposed rule change as modified by Amendment Nos. 1 and 2, and approves the proposed rule change as amended on an accelerated basis.

II. Description of the Proposal

NASD filed the proposed rule change with the Securities and Exchange Commission (the ''Commission'') on November 9, 2006. The Commission published the proposal for comment in the **Federal Register** on December 13, 2006.[3] The Commission received nine comments in response to the Notice.[4] On February 7, 2007, NASD filed Amendment No. 1 to the proposed rule change, which also responded to the comments.[5] The Commission received one comment in response to Amendment No. 1.[6] All of the comments received by the Commission regarding the proposed rule change are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). On April 19, 2007, NASD filed Amendment No. 2 to the proposed rule change, which also responded to the comment on the proposed rule change as modified by Amendment No. 1.[7]

NASD filed the proposed rule change to adopt proposed NASD Rule 2342, which would require NASD members to advise all new customers, in writing, at the opening of an account, and all customers at least once each year that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and to provide such customers with SIPC's telephone number and Web site address. Amendment No. 1 proposed that firms that are excluded from membership in SIPC pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (''SIPA'') and that are not SIPC members be exempt from the requirements of proposed Rule 2342. Amendment No. 2 proposed to exempt firms whose business consists exclusively of the sale of investments that are ineligible for SIPC protection from the requirements of proposed Rule 2342. Below is the text of the proposed rule change, as modified by Amendment Nos. 1 and 2. Proposed new language is in *italics.*

2000. BUSINESS CONDUCT

* * * * *

2300. Transactions with Customers

* * * * *

2342. SIPC Information

All members, except those members: (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; and (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

III. Summary of Comments on the Proposal and Amendment No. 1

Two commenters supported the proposed rule change. One believed that the disclosure required by proposed NASD Rule 2342 would remind clients that they are buying a product that is not directly underwritten or supported by a bank or covered by the Federal Deposit Insurance Corporation (''FDIC'').[8] Another believed that public customers would benefit from broader dissemination of information about SIPC.[9]

Seven commenters generally opposed the proposed rule change.[10] Five questioned the need for disseminating the information that would be required by proposed Rule 2342.[11] Two suggested that the proposed rule be revised to mandate that firms include on their Web sites a link to SIPC's Web site.[12] One questioned whether investors need, or are interested in, information about SIPC, suggested that investors are unlikely to read the proposed disclosure, and questioned the cost of implementing it.[13] Another stated that customers will be made

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54871 (December 5, 2006), 71 FR 74970 (December 13, 2006) (SR–NASD–2006–124) (''Notice'').

[4] *See* e-mail from Frederick G. Ferrara, Chief Compliance Office, Panattoni Securities, Inc. dated December 20, 2006 (''Ferrara 1''); e-mail from Philip C. McMorrow, President, Cantella Co., Inc. dated December 21, 2006 (''McMorrow''); e-mail from E.C. Blitz dated December 22, 2006 (''Blitz''); letter from Kenneth M. Cherrier, Chief Compliance Officer, Fintegra, to Nancy M. Morris, Secretary, Commission, dated December 22, 2006 (''Cherrier''); e-mail from Michael A. Pagano, 1st Global Capital Corp. dated December 22, 2006 (''Pagano''); e-mail from Christine E. Saccente, Vice President, Chief Compliance Officer, Operations Manager, Maxwell Noll Inc. dated December 27, 2006 (''Saccente''); e-mail from William R. Sykes, Sykes Financial Services LLC dated December 28, 2006 (''Sykes''); e-mail from John Harris, Chief Executive Officer, BondMart, Inc. dated December 30, 2006 (''Harris''); letter from Noland Cheng, Chairman, SIFMA Operations Committee, to Nancy M. Morris, Secretary, Commission, dated January 12, 2007 (''Cheng'').

[5] Amendment No. 1 modified the text of proposed Rule 2342.

[6] *See* e-mail from Frederick G. Ferrara, Chief Compliance Officer, Panattoni Securities, Inc. dated February 13, 2007 (''Ferrara 2'')

[7] Amendment No. 2 further modified the text of proposed Rule 2342 and proposed changing the effective date of the rule change.

[8] *See* Cherrier.

[9] *See* Cheng.

[10] *See* Ferrara 1; McMorrow; Blitz; Pagano; Saccente; Sykes; Harris.

[11] *See* McMorrow; Blitz; Pagano; Saccente; Sykes; Harris.

[12] *See* Pagano; Saccente.

[13] *See* Pagano.

aware of SIPC at such time as they need the coverage.[14]

In its response to these comments included with Amendment No. 1, NASD stated that, as noted in its initial rule filing, the genesis of the proposal was a U.S. General Accounting Office (''GAO'') [15] report in which the GAO made recommendations to the Commission and SIPC about ways to improve the information available to the public about SIPC and SIPA.[16] Among other things, the GAO recommended that self-regulatory organizations (''SROs'') explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of SIPA's coverage. NASD further stated that, after consulting with its members regarding the costs of providing customers with a copy of the SIPC brochure, NASD determined that the most cost-effective way of making customers aware of the SIPC brochure was to provide them with the information they would need to obtain a copy of the brochure, *i.e.,* by giving them SIPC's address and telephone number so they could call or write SIPC to order a copy of the brochure, and by giving them SIPC's Web site address so they could read the SIPC brochure online. NASD believes that requiring firms to provide customers with SIPC's address, telephone number and Web site at account opening and yearly thereafter would help to further educate customers regarding SIPC and encourage customers to review the SIPC brochure.

Two commenters believed that introducing firms should not be subject to proposed Rule 2342.[17] In response, NASD stated that it believed these commenters' concerns were addressed by a provision in the proposed rule that would allow firms, where both an introducing firm and clearing firm service an account, to assign the requirements of proposed Rule 2342 to one of the firms.

Five commenters believed that, as initially proposed, Rule 2342 would apply too broadly. One of these commenters believed that institutional customers should be exempt from the proposed rule.[18] Two of these commenters believed that NASD members that are exempt from membership in SIPC or from carrying SIPC coverage should be exempt from the proposed rule.[19] Another believed that firms selling only investment products that are ineligible for SIPC protection should be exempt from the proposed rule.[20]

In response to these comments, NASD stated, ''SIPA excludes certain categories of registered brokers and dealers from membership in SIPC, including 'persons whose business as a broker or dealer consists exclusively of * * * the distribution of shares of registered open end investment companies or unit investment trusts * * * the sale of variable annuities * * * the business of insurance, or * * * the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.' '' [21] NASD further stated that SIPA provides that all other persons registered as brokers or dealers under Section 15(b) of the Securities Exchange Act of 1934 [22] are required to be members of SIPC. NASD believed that firms that are required to be SIPC members should also be required to make the disclosures required by proposed NASD Rule 2342, regardless of the products currently being sold. Therefore, NASD did not propose to exempt any SIPC members from the requirements of proposed NASD Rule 2342.

However, NASD agreed with the commenters who believed that NASD members that are excluded from membership in SIPC should not be subject to the proposed rule, and, in Amendment No. 1, proposed to exclude from the requirements of proposed NASD Rule 2342 any member that is excluded from membership in SIPC.

One commenter believed that institutional customer accounts should be exempt from the proposed rule's disclosure requirements on the grounds that institutional customers are sophisticated investors that are well aware of SIPC and the protections it affords.[23] This commenter stated that institutional customers generally settle transactions in delivery versus payment/receive versus payment (''DVP/RVP'') accounts, and that most of them were likely to opt out of receiving quarterly customer account statements under NASD Rule 2340. This commenter also stated that receiving the disclosures that would be required by proposed Rule 2342 annually from each broker-dealer through which an institution executes transactions would create a flood of unnecessary and redundant disclosures that institutional customers would simply discard.

In response, NASD stated that it believed the benefit to institutional investors of receiving the SIPC disclosures at account opening and yearly thereafter outweighs any inconvenience that might be incurred. NASD stated that although many institutional investors are likely to be sophisticated investors, there are those that are not, and that, to the extent the required disclosures may make institutional investors more aware of SIPC and the protections it affords, NASD believed that the dissemination of the required information would be worthwhile. Therefore, NASD determined not to exempt institutional investors from the requirements of proposed Rule 2342.

After NASD filed Amendment No. 1, one commenter submitted a second letter, in which he further contended that firms that are SIPC members but that only sell investment products that are ineligible for SIPC protection may violate Article 11, Section 4(g)(2) of the SIPC By-Laws (Advertisement of Membership) if they are not exempt from the requirements of proposed Rule 2342.[24] In response to this comment, NASD agreed that proposed Rule 2342 should not require members whose business consists exclusively of the sale of investments that are ineligible for SIPC protection to distribute SIPC's contact information to their customers pursuant to proposed Rule 2342. Accordingly, in Amendment No. 2, NASD modified proposed Rule 2342 to exempt from the rule's requirements members whose business consists exclusively of the sale of investments that are ineligible for SIPC protection.

IV. Discussion and Commission's Findings

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act [25] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register.** NASD also proposed an effective date of 180 days following Commission approval, in order to give member firms sufficient time to make changes to their customer documentation and systems. After careful consideration, the Commission finds that the proposed rule change is consistent with the Act, and in particular, with Section 15A(b)(6) of the

[14] *See* Sykes.

[15] The GAO has since been renamed the Government Accountability Office.

[16] *See* GAO, *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,* GAO–01–653 (May 25, 2001).

[17] *See* Blitz; Pagano.

[18] *See* Cheng.

[19] *See* Cherrier; Sykes.

[20] *See* Ferrara 1.

[21] *See* Amendment No. 1 (citing 15 U.S.C. 78ccc(a)(2)(A)).

[22] 15 U.S.C. 78o(b).

[23] *See* Cheng.

[24] *See* Ferrara 2.

[25] 15 U.S.C. 78s(b)(2).

Act,[26] which provides, among other things, that NASD rules must be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[27] The Commission believes that NASD has adequately responded to concerns about the proposed rule change raised by commenters, and that the proposed rule change is consistent with the provision of the Exchange Act noted above. In particular, proposed NASD Rule 2342 should help to improve investors' awareness of SIPC's policies and practices, and the scope of coverage available under SIPA.

Pursuant to Section 19(b)(2) of the Act,[28] the Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof. Accelerating approval and delaying the effective date of the proposed rule change will give NASD additional time to notify its members about the requirements of the proposed rule and help to ensure that firms have sufficient time to efficiently make the changes to their customer documentation and systems needed to comply with the rule.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2006–124 and should be submitted on or before June 6, 2007.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASD–2006–124), as modified by Amendment Nos. 1 and 2, be, and it here is, approved on an accelerated basis, and shall be effective 180 days following the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9433 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78o–3(b)(6).

[27] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55732; File No. SR–NFA–2007–02]

Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Interpretive Notice to Compliance Rule 2–4 Regarding Disclosure Guidelines for FCMs Offering Sweep Accounts

May 9, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–7 under the Act,[2] notice is hereby given that on February 27, 2007, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA, on February 26, 2007, submitted the proposed rule change to the Commodity Futures Trading Commission (''CFTC'') for approval. The CFTC approved the proposed rule change on March 12, 2007.

I. Self-Regulatory Organization's Description of the Proposed Rules

Section 15A(k) of the Act [3] makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (''Members'') who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[4] The new Interpretive Notice to NFA Compliance Rule 2–4 entitled ''Disclosure Guidelines for FCMs Offering Sweep Accounts'' (''Interpretive Notice'') will apply to all futures commission merchant (''FCM'') Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11). The Interpretive Notice applies certain disclosure guidelines to FCM-offered sweep account programs that manage cash balances.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

As noted above, the Interpretive Notice applies certain disclosure guidelines to FCM-offered sweep account programs that manage cash balances. Specifically, these sweep account programs transfer a customer's excess funds from a regulated commodity account (whether a customer segregated or secured account) to a non-regulated account for the customer at the FCM, an affiliate of the FCM, or another entity so that the customer can obtain a higher investment return than maintaining the funds in the FCM's customer regulated commodity accounts.

The Interpretive Notice makes clear that the disclosure guidelines apply only to sweep account programs offered or regularly recommended by an FCM. If a customer elects on its own to transfer funds to a particular sweep account program that is not offered by the FCM, then the FCM does not have any disclosure obligations pursuant to the Interpretive Notice. Additionally, the disclosure guidelines are inapplicable to transfers made pursuant to an FCM's customer agreement's provisions whereby a customer authorizes the transfer of funds from a regulated commodity account to any other account maintained by the customer at the FCM or one of its affiliates when necessary to avoid a margin call or to reduce the debit balance in the other account, or to satisfy any other obligation to the FCM or its affiliates.

Initially, FCMs should identify the entity maintaining the sweep account and whether that entity is subject to regulation and should disclose any material terms and conditions, risks and features of their offered programs. In addition, FCMs should advise customers of any conflicts of interest in connection with the offered programs, including whether the FCM receives compensation or other benefits for customer balances maintained in the sweep account, and the FCM should advise the customer which entity to contact to gain access to any swept funds. An FCM should make these disclosures at the time a sweep program is offered to a customer and, of course, these disclosures should be updated for participants if any material changes are made to an existing sweep program. The Interpretive Notice also provides that if a customer elects to participate in a sweep program offered by the FCM, then the FCM must obtain the customer's written consent prior to any funds being transferred pursuant to the program.

The Interpretive Notice also requires FCMs to advise customers of the consequences of transferring monies from the FCM's customer regulated accounts. Specifically, the FCM should disclose that by transferring excess funds from an FCM's customer regulated commodity accounts, the customer will not receive the preferential treatment afforded funds held in a customer regulated commodity account pursuant to CFTC Regulation Part 190 and the U.S. Bankruptcy Code. The Interpretive Notice recognizes, however, that an FCM may offer programs that transfer monies to an account whereby customers receive certain other protections (*e.g.*, SIPC or FDIC) in the event of a bankruptcy. In this case, the FCM should disclose the nature and extent of the protection available, including any applicable SIPC or FDIC coverage. If the FCM's programs transfer funds to a non-regulated account that does not offer protections comparable to those afforded funds held in a customer regulated commodity account, then the FCM must clearly disclose this fact and describe the impact upon customer funds in the unlikely event that the entity maintaining the sweep account files for bankruptcy.

Failure to follow the prescribed guidelines may be deemed conduct inconsistent with a Member's obligation under NFA Compliance Rule 2–4 to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its commodity futures business. The Interpretive Notice recognizes, however, that FCMs offering these sweep programs may have to modify these guidelines to address their particular programs.

2. Statutory Basis

NFA has filed these proposed regulations pursuant to Section 19(b)(7) of the Act.[5] The rule change is authorized by, and consistent with, Section 15A(k) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment but did discuss it with NFA's FCM Advisory Committee. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

On February 26, 2007, NFA submitted the proposed Interpretive Notice to the CFTC for approval. The proposed rule change has become effective on March 12, 2007, the date of approval of the proposed rule change by the CFTC.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NFA–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NFA–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[5] 15 U.S.C. 78s(b)(7).

[6] 15 U.S.C. 78s(b)(1).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NFA–2007–02 and should be submitted on or before June 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9371 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55735; File No. SR–NYSE–2007–06]

Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change To Amend NYSE Rule 440A (''Telephone Solicitations'')

May 10, 2007.

I. Introduction

On January 25, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 440A, addressing member organizations' telephone solicitations of customers. The proposed rule change was published for comment in the **Federal Register** on March 29, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Rule 440A generally addresses member organizations' telephone solicitations of customers. Rule 440A(g) provides ''No member or member organization may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device.'' Subsection 440A(g)(1) further provides that a facsimile advertisement is not ''unsolicited'' where the recipient has granted the member organization prior express invitation or permission to deliver the advertisement, as further defined in the Rule. This proposed rule change provided that such an advertisement also will not be considered ''unsolicited'' where there is an ''established business relationship'' as defined in the present Rule 440A(j). In addition, the Exchange proposed to delete the term ''member'' as used in the Rule to reflect the recent reorganization of the Exchange,[4] and the term ''allied member'' as redundant within the context of the present regulation.

The amendments to Rule 440A(g) were adopted by the Exchange on December 2, 2004[5] to incorporate regulations issued by the Federal Communications Commission (''FCC'') and the Federal Trade Commission (''FTC'') relating to the implementation of the National Do Not Call registry and the amendments to the Telephone Consumer Protection Act of 1991.[6] The FCC and FTC regulations contained no exception for facsimiles sent to customers with which a broker-dealer had an ''established business relationship'' as such term was defined. Subsequently, Congress passed legislation[7] which restored an exemption for unsolicited faxes sent to a recipient with whom the sender had an established business relationship. Accordingly, the proposed amendments to NYSE Rule 440A(g)(1) added an exception for established business relationships to the definition of ''unsolicited'' and set forth the measures necessary for a customer to opt out of the receipt of further communications. These standards, which are taken from applicable FCC regulations,[8] generally require that the member organization and the person not only have an established business relationship,[9] but also that the member organization obtain the fax number from the recipient (or the recipient's web site, directory, or advertisement). Further, the recipient must not have stated on those materials that they do not accept unsolicited advertisements at the listed number. Under the proposed rule change, the member organization must also take reasonable steps to verify that the recipient consented to have the number listed.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the NYSE's rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[10] The Commission believes that in bringing the NYSE's Rule setting forth the definition and treatment of unsolicited telemarketing communications into concurrence with FCC regulations, the proposed rule change will harmonize currently disparate regulations and therefore provide greater clarity, both to members and customers, as to which communications between members and customers qualify as ''unsolicited.''[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12] that the proposed rule change (SR–NYSE–2007–06), be, and hereby is, approved.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 55517 (Mar. 23, 2007), 72 FR 14842 (Mar. 29, 2007).

[4] *See* Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 6, 2006) (SR–NYSE–2005–77).

[5] *See* Exchange Act Release No. 34–52579 (Oct. 7, 2005), 70 FR 60119 (Oct. 14, 2005) (SR–NYSE–2004–73).

[6] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC 03–153 (Jun. 26, 2003), 68 FR 44144 (Jul. 25, 2003).

[7] Junk Fax Prevention Act of 2005, Pub. L. 109–21, 119 Stat. 359 (2005).

[8] FCC 06–42 (Apr. 5, 2006), 71 FR 56893 (Sept. 28, 2006).

[9] An established business relationship is defined as a prior existing relationship formed by voluntary two-way communication between a member organization and a person where the person has, generally speaking, done business with the member organization within the 18 months preceding the telephone call, the member organization is the broker-dealer of record for the person's account within those 18 months, or the person has contacted the member organization to inquire about a product or service within the three months preceding the telephone call.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9366 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55738; File No. SR–NYSEArca–2007–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To Waive 2007 Annual Listing Fees for Certain Dually-Listed Issuers Who Delist During 2007

May 10, 2007.

I. Introduction

On March 6, 2007, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to waive 2007 annual listing fees for certain issuers listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 5, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to waive 2007 annual listing fees for any issuers, who, as of January 1, 2007, were dually-listed on NYSE Arca Equities and another securities exchange, provided that such dually-listed issuers provide notice to the Exchange by June 30, 2007 of their intention to voluntarily withdraw listing from NYSE Arca Equities and that such dually-listed issuers withdraw listing before December 31, 2007.

III. Discussion

After a careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that the Exchange increased its annual listing fees substantially as of January 1, 2007.[6] The Exchange represented that as a result, many dually-listed issuers notified the Exchange of their intent to voluntarily delist from NYSE Arca Equities prior to January 1, 2007. Some dually-listed issuers, however, were unable to voluntarily delist by January 1, 2007, due to their administrative or corporate governance process. The proposal will permit such dually-listed issuers, as well as any other dually-listed issuers who comply with the proposal's requirements, a reasonable period of time to comply with their administrative or corporate governance process to voluntarily delist from NYSE Arca Equities without paying the higher 2007 annual listing fees. The Commission believes that it is appropriate to waive the 2007 annual listing fees for the withdrawing dually-listed issuers because these issuers fully intend to withdraw their listing, must withdraw by December 31, 2007, and are already listed on another national securities exchange. Based on the above, the Commission believes that such waiver is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSEArca–2007–17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9411 Filed 5–15–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55564 (March 30, 2007), 72 FR 16844.

[4] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4).

[6] *See* Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR–PCX–2006–16).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

SBA Lender Risk Rating System

AGENCY: Small Business Administration.

ACTION: Final notice.

SUMMARY: This final notice implements the Small Business Administration's (SBA's) risk rating system (Risk Rating System) as an internal tool to assist SBA in assessing the risk of each active 7(a) Lender's and Certified Development Company's (CDC's) SBA loan operations and loan portfolio. The Risk Rating System will enable SBA to monitor 7(a) Lenders and CDCs (collectively, ''SBA Lenders'') on a uniform basis and identify those institutions whose SBA loan operations and portfolio require additional SBA monitoring or other action. It is also a vehicle for assessing the aggregate strength of SBA's 7(a) and 504 portfolios. Under the Risk Rating System, SBA will assign each SBA Lender a composite rating based on certain portfolio performance factors, which may be overridden in some cases due to SBA Lender specific factors that may be indicative of a higher or lower level of risk. SBA Lenders will have access to their own ratings through SBA's Lender Portal (Portal).

DATES: This notice is effective June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, Office of Lender Oversight, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–3049.

SUPPLEMENTARY INFORMATION:

Background Information

On May 1, 2006, SBA published a notice and request for comment in the **Federal Register** seeking comments on a proposed SBA internal Risk Rating System for assessing an SBA Lender's SBA loan portfolio (i.e., loan portfolio performance). 71 FR 25624 Notice. SBA published a subsequent notice extending the comment period for the proposed Risk Rating System to July 15, 2006. 71 FR 34674. The Risk Rating System is an internal tool that uses data in SBA's Loan and Lender Monitoring System (L/LMS) to assist SBA in assessing the risk of an SBA Lender's SBA loan performance on a uniform basis and identify those SBA Lenders whose portfolio performance demonstrate the need for additional SBA monitoring or other action. The Risk Rating System will also serve as a vehicle to measure the aggregate strength of SBA's overall 7(a) and 504 loan portfolios and to assist SBA in managing the related risk. In addition, SBA will use risk ratings to make more

effective use of its on-site and off-site lender review and assessment resources.

As discussed in greater detail in the Notice under the Risk Rating System, SBA will assign each SBA Lender a composite rating. The composite rating reflects SBA's assessment of the potential risk to the government of that SBA Lender's SBA portfolio performance. A rating of 1 will indicate strong portfolio performance, least risk, and that the least degree of SBA management oversight is needed (relative to other SBA Lenders in the peer group), while a 5 rating will indicate weak portfolio performance, highest risk and therefore, the highest degree of SBA management oversight.

For 7(a) Lenders, SBA will base the composite rating on four common components or factors. The common factors for 7(a) Lenders will be as follows: (i) 12 month actual purchase rate; (ii) problem loan rate; (iii) three month change in the small business predictive score (SBPS), which is a small business credit score on loans in the 7(a) Lender's portfolio; and (iv) projected purchase rate derived from the SBPS. On a lender-specific basis, the existence of additional factors may cause SBA to override the composite rating and either increase or decrease the composite rating.

For CDCs, SBA will base the composite rating on three common components or factors. The common factors for CDCs will be as follows: (i) 12 month actual purchase rate; (ii) problem loan rate; and (iii) average SBPS on loans in the CDC's portfolio. The third factor replaces the third and fourth factors used for 7(a) Lenders because it was found, during the testing process, to be more predictive of SBA purchases for CDCs. On a CDC-specific basis, the existence of additional factors may cause SBA to override the composite rating and either increase or decrease the composite rating.

In general, the factors described above reflect both historical SBA Lender performance and projected future performance. SBA will perform quarterly calculations on the common factors for each SBA Lender, so that SBA Lenders' composite risk ratings will be updated on a quarterly basis.

The composite risk rating is a measure of how each SBA Lender's portfolio performance compares to the portfolio performance of its peers. Thus, an individual SBA Lender's overall portfolio performance (using all common factors) will be compared to its peers to derive that SBA Lender's composite risk rating. SBA Lenders whose overall portfolio performance (using all of the common factors) is worse than their peers will receive a worse, or higher score, while SBA Lenders whose overall portfolio performance is better than their peers will receive a better, or lower, score. In order to prevent the inequitable comparison of differently-sized SBA Lenders, which may be affected differently by similar changes in their portfolio performance, SBA has separated both 7(a) Lenders and CDCs into different peer groups based upon their SBA loan portfolio size.

All SBA Lenders will be given access to their composite risk rating and component results through SBA's Lender Portal, which is available on line. The proposed notice described the Portal information that SBA will provide and how SBA lenders can access this information.

Comments Received and Changes Made

SBA received 51 comments on the proposed Risk Rating System. Twenty-three of the comments were from CDCs. Thirteen of the comments were from 7(a) Lenders other than Small Business Lending Companies (SBLCs). Six comments were from trade organizations. Five of the comments were from SBLCs. Finally, four comments were from individuals. Twenty-three of the commenters were generally supportive of an SBA Lender rating system. Comments generally covered the following areas: (i) The Portal; (ii) the rating components; (iii) use of the override; (iv) peer groupings; (v) the comparative nature of the system; (vi) static pool analysis; and (vii) other comments.

Portal

The purpose of the Portal is to communicate SBA Lender performance to SBA Lenders. The Portal will allow SBA Lenders to view their own quarterly performance data, including their most current composite risk rating. The Portal will also allow SBA Lenders to access data on peer group and portfolio averages. Consequently, an SBA Lender will be able to gauge its performance relative to its peer group and the portfolio norm, although SBA Lenders will not be able to view the individual ratings and performance indicators of other SBA Lenders. The quarterly performance data is updated approximately six to eight weeks after a calendar quarter ends.

Several commenters requested that SBA provide additional detail to facilitate reconciliation of the Portal performance results with performance results from other SBA and SBA Lender accounting systems. They also requested that SBA provide a process for correcting errors uncovered in the reconciliation process. SBA has provided that information on its Web site at *http://www.sba.gov/olo/outstanding.pdf*. As indicated on the website, L/LMS incorporates data from many different sources in order to calculate the common factors that are used to develop each SBA Lender's composite rating. As a result, some portfolio performance data in the Portal may not appear to be the same as that provided to SBA Lenders from other official sources (e.g. 504 LAMP and its Management Reports; Sacramento Loan Processing Center's ratios, Risk database reports.). An explanation of the potential differences between data in the Portal and data provided by other sources may also be found on SBA's Web site at *http://www.sba.gov/idc/groups/public/documents/sba_program_office/olo_portal_data.pdf*.

A few commenters requested that SBA Lenders be able to access previous quarters' data. The commenters explained that access to previous data would facilitate trend analysis. SBA has considered this comment and has added all previous quarters' data to the portal.

A few commenters suggested that SBA provide more than one user account per SBA Lender. Multi-bank holding companies, and SBA Lenders with centralized SBA loan processing or servicing, stated that it would be helpful to have additional user accounts for managers with various SBA lending responsibilities. SBA is working with its contractor on the possibility of allowing SBA Lenders more than one user account.

A few commenters suggested that it would be helpful if users had access to peer group performance statistics for all peer groups in the user's lending program [7(a) or 504], rather than the performance of only the user's peer group. SBA believes that providing portfolio performance information on all peer groups may be informative for SBA Lenders, and is therefore making that information available through the Portal.

Components

Several commenters discussed SBA's proposed component factors and suggested that SBA consider other components for the Risk Rating System. Commenters suggested that SBA consider the following as additional or alternative components: (i) Historical loss rate; (ii) a longer term purchase rate; (iii) value of pledged collateral; (iv) credit scores for all principals and guarantors; (v) consideration of SBA's

social mission; and (vi) removal of the problem loan rate.

(i) Historical Loss Rate

Several commenters suggested that incorporation of actual historical losses as a component would increase model accuracy. Ten commenters suggested substituting actual historical loss rate for the 12-month purchase rate component. In developing the risk rating model, SBA considered the use of historical loss rate as a component. It was found that while historical loss rates are somewhat predictive of future purchases, their use in combination with the other component factors provided little additional predictiveness. In addition, loss is a lagging indicator. Actual losses are not recorded until all collateral has been liquidated and normal collection efforts have been exhausted, sometimes years after the default and purchase. This may have negative implications for the calculation of losses and the SBA Lender's historical loss rate. Specifically, negative events such as loan origination fraud or poor underwriting decision-making under previous management may adversely impact an SBA Lender's risk rating for several years; conversely, improved origination or underwriting practices will only slowly be reflected in that SBA Lender's risk rating. On the other hand, the 12-month purchase component factor, where both positive and negative events will be reflected in the SBA Lender's risk rating more quickly than they would with a historical loss rate factor. In addition, the time lag inherent in a historical loss rate factor may result in the rate not reflecting the SBA Lender's current portfolio. For example, if a 7(a) Lender had originated most of its loans under the former Low-Doc program, its historical loss rates would continue to reflect losses from that program for several years, even if the 7(a) Lender's current portfolio were predominantly comprised of EXPRESS loans. Finally, SBA believes that use of historical loss rates may not reflect some of the costs borne by SBA and the Federal Government, such as the cost of funds used for loan purchases and the administrative costs borne by SBA in its liquidation oversight and charge-off activities.

A few commenters that sell their SBA loans in the secondary market believed that the use of purchase rates in the component factors and composite ratings, rather than recovery or loss rates, was a disadvantage to them given that SBA purchases all defaulted loans from the secondary market. These commenters also stated that their recovery rates should be higher than other 7(a) Lenders, since loans are purchased by SBA out of the secondary market earlier in the default curve. SBA agrees that loss rates may provide some evidence of SBA Lender risk, since the rates may be an indicator of poor origination, servicing, or liquidation on the part of the SBA Lender. In addition, the rates—over time—do show SBA's actual losses from an SBA Lender's portfolio. Therefore, SBA is reviewing its data to determine how to incorporate some measure of losses into SBA Lenders' composite risk ratings. At this time, we cannot identify the form such a measure would take, or how the measure would be considered within the Risk Rating System. For example, SBA may use net loss or recovery rates, or we may use a calculation of net cash flows to account for the revenues provided to SBA from guaranty fees and other fees. Once SBA has developed its data measurements and determined what it believes to be the best measure of losses, it will submit the proposal in the form of a notice in the **Federal Register**. At least until then, SBA will use the purchase rate as a key component because it is a more leading indicator, it indicates purchase, liquidation, and charge-off costs, and has tested as a better predictor of future purchases.

(ii) Longer Term Purchase Rate

A few commenters recommended that SBA continue to use purchase rates as a rating component, but proposed a longer term purchase rate of 36 months, rather than the 12 month purchase rate. During the Risk Rating System development process, SBA considered using both 24 and 36 month historical purchase rates; however, the 12 month historical purchase rate was selected because it proved to be more predictive of future purchases than either of the other two terms.

(iii) Value of Pledged Collateral

A few commenters recommended that the value of pledged collateral should be considered as a component factor. SBA considered the use of value of pledged collateral in its Risk Rating System. However, SBA believes that the use of pledged collateral should not be considered a possible component factor for several reasons. First, SBA does not regularly collect information on the value of pledged collateral on all of its loans. Second, each SBA Lender has its own individual policy regarding how it values pledged collateral; for example, different SBA Lenders will assign different market value rates to the same form of collateral. Finally, even where SBA collects data on pledged collateral, it only does so for one tax identification number, which may understate the amount of collateral actually pledged. For these reasons, SBA has determined not to use pledged collateral as part of its composite risk ratings.

(iv) Credit Scores for All Principals/ Guarantors

A few commenters requested that SBA include credit information on all principals and guarantors associated with a particular loan, rather than the business and the principal owner. These commenters surmised that without credit information on all of the principals of the business, SBA might understate the loan's credit strength. Currently, SBA can only collect information on one additional principal or guarantor. SBA is in the process of increasing the number of principals and guarantors whose credit information will be used, when available.

(v) Consideration of Economic Development Goals

Several commenters stated that the ratings failed to take into consideration the economic development goals of SBA's lending programs as may be evidenced through SBA Lenders' historical loan volume. SBA appreciates the critical role that SBA Lenders play in helping to achieve SBA's economic development goals. However, the Risk Rating System is intended as a means to help SBA measure SBA Lender risk and program risk. Thus, incorporating a factor that measures SBA Lenders' success in helping SBA achieve its mission is not appropriate within the Risk Rating System.

(vi) Problem Loan Rate

Seven commenters expressed concern that including the problem loan rate as a component will be a disincentive to working with borrowers to save a business or maximize recovery on the loan during the liquidation process. SBA believes that this should not be a concern, because it is in an SBA Lender's interest as holder of a remaining percentage in the loan (generally 15% to 50%) to maximize recovery and minimize losses. Further, under SBA Standard Operating Procedure (SOP) 50–50–4 (Loan Servicing), Chpt. 7, para 1(c) and SOP 50–51–2A (Loan Liquidation and Acquired Property), Chpt. 8, para. 1(a)(4), an SBA Lender should work with borrowers to either allow the borrower to retain their business or, failing that objective, to reduce both the SBA Lender's and SBA's losses to the

greatest extent possible. Therefore, application of the Problem Loan Rate as a component factor for all SBA Lenders should not serve as a disincentive to working with borrowers and maximizing recoveries.

Use of the Override Component

The May 1, 2006 notice proposed that the occurrence of certain factors may lead SBA to conclude that an individual SBA Lender's composite rating is not fully reflective of the SBA Lender's true risk. Therefore, the proposal provided for consideration of overriding factors. The use of the overriding factors will enable SBA to include key risk factors that are not necessarily applicable to all SBA Lenders, but which indicate a greater or lower level of risk from a particular SBA Lender than the calculated score will provide. Use of overriding factors will occur on a case-by-case basis in SBA's discretion. One of the most important overriding factors may be an SBA Lender's on-site risk-based reviews/assessments. Another important overriding factor may be the institution of enforcement actions by a regulator or other authority. Examples of other overriding factors that may be considered are: Early loan default trends; purchase rate or projected purchase rate trends; abnormally high default, purchase or liquidation rates; denial of liability occurrences; lending concentrations; rapid growth of SBA lending; inadequate, incomplete, or untimely reporting to SBA; inaccurate submission of required fees to SBA; and audits or investigations conducted by the SBA Office of Inspector General.

Commenters were generally supportive of the concept of allowing SBA to override an SBA Lender's risk rating should circumstances indicate that the SBA Lender's rating may not truly reflect SBA's risk. One commenter suggested that SBA should provide additional information on the override process. As stated in the proposal, SBA will notify an SBA Lender in the event SBA plans to override that SBA Lender's risk rating, and provide the SBA Lender with an explanation of the reason(s) for the override. If the SBA Lender disagrees with the override, it may ask SBA to reconsider the override, and provide to SBA all supporting information.

Peer Groupings

The Notice proposed the separation of SBA Lenders into peer groups based on SBA loan portfolio size, as determined by outstanding SBA guaranteed dollars. SBA based the peer groups on portfolio size for several reasons. First, it allows the peer groups to reflect each peer group's relative risk to SBA—SBA Lenders in large peer groups will generally represent a greater risk to SBA, in terms of potential dollars of loans that SBA may be required to purchase, than SBA Lenders in smaller sized peer groups. Second, basing peer groups by portfolio sizes will significantly reduce the possibility of the same event having a different impact on SBA Lenders in the same peer group. For example, the effect of the purchase of one loan by SBA will have a minimal impact on the purchase rates of SBA Lenders in a large peer group; the purchase of one loan would have a similar impact for any SBA Lender in a small peer group. Third, the size groups selected allowed SBA to split both 7(a) Lenders and CDCs into peer groups that were large enough to maintain a statistically valid number of SBA Lenders within each peer group. Finally, splitting SBA Lenders into peer groups based on the size of SBA-guaranteed loan dollars enables SBA to better monitor those SBA Lenders in the largest peer groups that represent the overwhelming majority of guaranteed dollars at risk, and allows SBA to make the best use of its oversight resources.

SBA received several comments suggesting that SBA use alternative or additional characteristics to set the peer groups. Most suggested using geographic or regional characteristics. Others suggested establishing peer groups based on loan originations, use of loan proceeds, local economic events and conditions, portfolio industry segment concentration, SBA delivery method, average loan term (months), SBA Lenders' past contribution to SBA's success in meeting its public objectives, SBA Lenders' underwriting quality, SBA Lenders' workout standards and experience, new vs. experienced SBA Lenders, average SBA loan size, SBA Lenders' business model, and organizational structure.

A number of commenters suggested that there may be a number of alternative peer groups that might be established. However, portfolio size is the only necessary alternative. This is due to the large variance in performance measures of smaller sized portfolios. Since Lenders with few loans are more likely to have extremely high or low performance measures, all lenders in the largest two peer group would only receive average ratings—none would receive above average or below average ratings. Further, as additional factors are added to further segment the peer groups, the reduced peer group size would reduce the statistical validity of the peer groups (particularly for CDCs). As the number of SBA Lenders in each peer group declines, the performance of individual SBA Lenders within each peer group will become more evident to its peers, and may affect competitive advantages or disadvantages held by each SBA Lender. Also, most of the suggested peer group factors do not provide additional measures of risk, or correlate to increased purchases on the part of SBA. We, therefore, believe basing the peer groups at this time on one metric, portfolio size, is the best measure of potential purchase risk.

SBA agrees that one or more of the alternative peer grouping categories that were suggested may be useful in understanding the problems that have resulted in an SBA Lender having a poor risk rating. However, the reasons for those risk ratings will vary from SBA Lender to SBA Lender; therefore, it is difficult to isolate one particular category among those suggested that may impact most SBA Lenders' peer ratings, and that thus would be useful in the peer groupings. As noted above, trying to implement peer groupings based upon several factors, in order to explain all possible reasons for an SBA Lender's poor risk rating, could destroy the statistical validity of the model. Therefore, SBA feels that the types of factors mentioned by commenters would be more useful in discussions between SBA and the SBA Lender as an explanation of the reasons for the SBA Lender's specific portfolio performance issues. Consequently, SBA will take such factors into account during the corrective action process, to determine the causes and remedies for the weaknesses resulting in the poor risk rating, as well as when determining whether to take any enforcement action against an SBA Lender.

Several commenters, accepting of SBA's use of portfolio size as the basis for determining peer groupings, suggested increasing the number of groups. Many of these commenters were concerned that the dollar size range of certain peer groups was broad enough to include SBA Lenders with different types and scales of operation, and thus could yield an inaccurate comparison of SBA Lenders within the peer group. SBA understands the concern; however, further segmentation of the size-based peer groups will result in many of the same problems as those noted in the preceding discussion regarding alternative or additional peer group segmentation. As SBA was developing its Risk Rating System, it was clear that each peer group would have to contain a statistically significant number of SBA Lenders to ensure the validity of the statistical model and methodologies used to risk rate SBA Lenders. Further

splitting of the current peer groups would jeopardize the model's validity at either one or several of the peer group levels. For example, as of June 30, 2006, there were a total of eight 7(a) Lenders with portfolios of more than $500 million in SBA guaranteed dollars. In order to maintain the statistical validity of the largest dollar peer group, it was necessary to set that peer group size at $100 million or more, rather than $500 million or more.

Comparative Analysis

Some commenters noted that rating peers on a curve causes some SBA Lenders in each group to have risk ratings that indicate relatively weak portfolio performance. Commenters stated that an SBA Lender with a certain risk rating in one peer group will not be comparable to another SBA Lender with the same risk rating in a different peer group. This is generally true. The nature of the Risk Rating System does not lend itself to direct comparisons between SBA Lenders in different peer groups. The Risk Rating System uses step-wise regression analysis to determine the relative weighting of each of the component factors that optimizes the system's predictiveness of future loan purchases. For each peer group, the weighting of each component factor in predicting future purchases will vary according to the relative weights that yield the greatest level of predictiveness for that specific peer group. Thus, the relative weightings of each of the component factors will change from peer group to peer group, making a direct comparison of SBA Lenders across peer groups less useful. SBA does not intend to evaluate or compare SBA Lenders across different peer groups, or against the overall portfolio. Rather, SBA will evaluate each SBA Lender according to its performance as measured against those in its peer group.

Some of these commenters suggested that SBA consider establishing benchmarks, either in lieu of, or in conjunction with, the comparative ratings. Commenters expressed that SBA Lenders should not have a poor risk rating if their portfolio performance was only slightly worse than their peers, but still within an acceptable range. For example, one commenter noted that by using the comparative analysis, some SBA Lenders could be rated relatively poorly even if they were in compliance with SBA's program. The commenter was concerned that SBA would unnecessarily spend time and resources monitoring the risk of ''compliant'' SBA Lenders when overall program performance was acceptable. Conversely, the concern was that there would not be enough oversight when overall program performance became unacceptable.

The comment appears to suggest that SBA should not dedicate resources to program and SBA Lender monitoring while the program is performing well. However, there is no definition of acceptable program performance; SBA would first have to develop subjective measures of program performance in order to determine whether the program meets the definition of ''acceptable performance.'' These measures would have to be continually monitored and replaced, as program and economic conditions change. Given the process required for implementation of new measurements and standards, the measures might easily become outdated by the time they are implemented. The comparative analysis in the current Risk Rating System adjusts to changes in program and economic conditions, so there is little possibility that the risk ratings will be based on outdated performance measures.

Second, if program performance (and the performance of the participating Lenders) is deemed ''acceptable'', it is implied that SBA will reduce its monitoring of its Lenders. However, this reduction in monitoring could result in SBA failing to detect negative performance trends that could point to unacceptable performance in the future. Without ongoing monitoring, SBA may be forced to react too late to negative performance and then have to devote even greater resources to resolve entrenched SBA Lender deficiencies. Using a relative performance rating recognizes that there are always SBA Lenders that present relatively higher risk, and that SBA Lender oversight is an ongoing process to help ensure that SBA Lenders with poorly performing portfolios (relative to the peer group) improve—which will help ensure that the entire portfolio continues to perform well. By taking preventative measures to monitor lower-rated SBA Lenders when portfolio performance is relatively strong, SBA can reduce the likelihood of overall portfolio deterioration, help keep SBA losses down, and reduce SBA lending program costs.

Finally, it would be premature to develop the Risk Rating System with benchmarks at this time. This is because the System has not been available throughout an entire economic cycle. Benchmarks will be more meaningful and equitable if developed based upon long-term portfolio performance that reflects all stages of an economic cycle. We do not believe the Risk Rating System has enough historical performance information to establish meaningful benchmarks for the components. Once that data is developed, SBA may consider incorporating benchmarks. SBA will publish a notice for comments should SBA decide to propose benchmarks.

Static Pool Measurements

Some commenters suggested that SBA include all originated loans in its component factor measures, even those loans that have prepaid or been liquidated and charged-off by SBA. These commenters believe that measuring historical loan purchases as a percentage of all loans, for example, would present a more accurate picture of the quality of loans originated by SBA Lenders, because it would include good loans that had improved their credit quality so much that the loan had become eligible for conventional financing and had paid-off.

It is SBA's opinion that using only those loans still in the SBA Lender's portfolio is a better indicator of an SBA Lender's risk for the simple reason that, once a loan is paid-off, SBA no longer retains any risk of purchase. In addition, SBA believes that such an approach would be unfair to new SBA Lenders that do not have historical prepayment history to offset high purchase rates. Finally, SBA believes that prepayments affect all SBA Lenders, so the impact of one SBA Lender's prepayment history should have a minimal effect on that SBA Lender's risk rating relative to its peers.

Other Comments

Several respondents asked for more information on how the model weighs factors so they could better understand and evaluate L/LMS. As described above, in order to maximize the predictiveness of the Risk Rating System within each peer group, each of the component factors has a different weighting from peer group to peer group, and the weighting can vary from quarter to quarter. Commenters were also unfamiliar with the SBPS that is a key part of the model, and wanted to learn how it works in credit evaluation. The SBPS is a proprietary portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. It is compatible with Fair, Isaac & Co.'s ''Liquid Credit'' origination score, which is a commercially available, off-the-shelf product used by many small business lenders.

Several commenters requested an appeals process of the rating generated by the Risk Rating System. An appeals process presumes that enforcement

actions will be automatically generated as a direct result of an SBA Lender's risk rating. However, SBA generally does not intend to use the Risk Rating System as the sole basis for taking enforcement actions against SBA Lenders. The primary purpose of the system is to focus SBA's oversight resources on those SBA Lenders whose portfolio performance (as shown by the Risk Rating System) demonstrate a need for further review and evaluation by SBA. SBA expects that enforcement actions would typically be taken only after SBA has engaged the SBA Lender, and generally will not be taken until after the SBA Lender has had an opportunity to eliminate the problem through a corrective action process.

Text of the SBA Lender Risk Rating System

Overview

Under SBA's Risk Rating System, SBA assigns all SBA Lenders a composite rating. The composite rating reflects SBA's assessment of the potential risk to the government of that SBA Lender's SBA portfolio performance.

For 7(a) Lenders, the SBA composite rating is based on four common components or factors. The common factors for 7(a) Lenders are as follows: (i) 12 month actual purchase rate; (ii) problem loan rate; (iii) three month change in the small business predictive score (SBPS), which is a small business credit score on loans in the 7(a) Lender's portfolio; and (iv) projected purchase rate derived from the SBPS.

For CDCs, the SBA composite rating is based on three common components or factors. The common factors for CDCs are as follows: (i) 12 month actual purchase rate; (ii) problem loan rate; and (iii) average SBPS on loans in the CDC's portfolio. The third factor replaces the third and fourth factors used for 7(a) Lenders because it was found, during the testing process, to be more predictive of SBA purchases for CDCs. These factors for 7(a) Lenders and CDCs are discussed in more detail in the section entitled ''Rating Components'' below.

In general, these factors reflect both historical SBA Lender performance and projected future performance. The factors are derived through formulas developed using regression analysis validated and tested by industry experts. SBA performs quarterly calculations on the common factors for each SBA Lender, so SBA Lenders' composite risk ratings are updated on a quarterly basis. Each of the factors is described in more detail in the Rating Components section below.

The composite risk rating is a measure of how each SBA Lender's loan performance compares to the loan performance of its peers. Thus, an individual SBA Lender's overall loan performance (using all common factors) is compared to its peers to derive that SBA Lender's composite risk rating. SBA Lenders whose overall portfolio performance (using all of the common factors) is worse than their peers will receive a worse, or higher score, while SBA Lenders whose overall portfolio performance is better than their peers will receive a better, or lower, score.

SBA recognizes that it may be inequitable to compare all SBA Lenders in a risk rating system, without separating them into peer groups, because changes in loan performance would have dramatically different impacts on the portfolio performance of SBA Lenders of different sizes. For example, the purchase of one loan from an SBA Lender will have a much higher impact on the actual purchase rate component of an SBA Lender with a small portfolio than it will on the actual purchase rate of an SBA Lender with a large portfolio. Therefore, SBA has established peer groups to minimize the differences that could result from changes in loan performance for portfolios of different sizes. The peer groups are as follows (based on outstanding SBA guaranteed dollars):

7(a) Lender peer groups	CDC peer groups
$100,000,000 or more	$100,000,000 or more.
$10,000,000–$99,999,999	$30,000,000–$99,999,999.
$4,000,000–$9,999,999	$10,000,000–$29,999,999.
$1,000,000–$3,999,999	$5,000,000–$9,999,999.
$0–$999,999 [7(a) Lenders disbursed at least one loan in past 12 months]	Less than $5,000,000.
$0–$999,999 [7(a) Lenders did not disburse at least one loan in past 12 months].	

As noted above, the common components are used to derive a composite risk rating for each 7(a) Lender and CDC. No single component factor normally decides an SBA Lender's composite rating. However, depending upon the size of the peer group, and the variation between an SBA Lender's performance and that of its peers, a single factor can carry a disproportionate weight among the three or four components.

Composite Rating

SBA assigns a composite rating of 1 to 5 to each SBA Lender based upon its portfolio performance. A rating of 1 indicates strong portfolio performance, least risk, and that the least degree of SBA management oversight is needed (relative to other SBA Lenders in their peer group), while a 5 rating indicates weak portfolio performance, highest risk, and therefore, the highest degree of SBA management oversight. SBA provides the following definitions for the composite ratings.

Composite 1—The SBA operations of an SBA Lender rated 1 are considered strong in every respect, and typically score well above average than their peer group averages in all or nearly all of the rating components described in this Notice. An SBA Lender rated 1 generally has relatively stable component factors and overall composite rating from one quarter to the next. Since the component factors measure previous performance, and also attempt to predict future performance, an SBA Lender rated 1 is more likely to have well below average historical purchase rates (as compared to its peers), as well as well below average current problem loan rates that predict lower than average future purchase rates. Overall, loans in the portfolio of an SBA Lender rated 1 demonstrate highly acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. An SBA Lender rated 1 typically also has a well managed SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large SBA Lenders). Based on the strengths outlined in this composite rating, SBA Lenders rated a 1 present SBA with the least amount of risk, and thus are subject to the lowest level of SBA oversight compared to other SBA Lenders in the same peer group.

Composite 2—The SBA operations of an SBA Lender rated 2 are considered good, and typically are above average in all or nearly all of the rating components described in this Notice. An SBA Lender rated a 2 has component factors and a composite

rating that typically are relatively stable from one quarter to the next. An SBA Lender rated 2 is more likely to have below average previous (12 months) purchase rates (as compared to its peers), as well as below average current problem loan rates that predict lower than average future purchase rates. Generally, loans in the portfolio of an SBA Lender rated 2 demonstrate better-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. An SBA Lender rated 2 has a generally well managed (*i.e.*, a few minor exceptions or findings) SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large SBA Lenders). Based on the strengths outlined in this composite rating, SBA Lenders rated a 2 present SBA with a lower level of risk, and thus are subject to a lower level of SBA oversight compared to other SBA Lenders in the same peer group.

Composite 3—The SBA operations of an SBA Lender rated 3 are considered about average in all or nearly all of the rating components described in this Notice. An SBA Lender rated a 3 has, on average, component factors and an overall composite rating that generally are relatively stable from one quarter to the next. An SBA Lender rated 3 likely has average previous (12 months) purchase rates (as compared to its peers), as well as average current problem loan rates that predict future purchase rates in line with SBA peer averages. Generally, loans in the portfolio of an SBA Lender rated 3 demonstrate acceptable credit quality and/or credit trends as measured by credit scores and peer performance. An SBA Lender rated 3 has an adequate (i.e., some minor exceptions or findings, but few if any major exceptions or findings, which can be corrected in the normal course of business) SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large SBA Lenders). However, SBA Lenders rated a 3 have room for improvement, should monitor their portfolios closely, and consider methods to improve loan performance. Based on the strengths and weaknesses outlined in this composite rating, SBA Lenders rated a 3 present SBA with an acceptable level of risk, and are thus subject to standard SBA oversight compared to other SBA Lenders in the same peer group. Oversight may include requests for corrective action plans.

Composite 4—The SBA operations of an SBA Lender rated 4 are considered below average in all or nearly all of the rating components described in this Notice. An SBA Lender rated a 4 may have several changes in any of its component factor rates; the component factors and overall composite rating may demonstrate instability or negative performance from one quarter to the next. An SBA Lender rated 4 is likely to have above average previous (12 months) purchase rates (as compared to its peers), as well as above average current problem loan rates that predict future purchase rates above SBA portfolio averages. Generally, loans in the portfolio of an SBA Lender rated 4 demonstrate somewhat less-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. An SBA Lender rated 4 likely has a poorly managed (i.e., both minor exceptions or findings, and major exceptions or findings) SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large SBA Lenders). Based on the weaknesses outlined in this composite rating, SBA Lenders rated a 4 present SBA with a less-than-acceptable level of risk, and are thus subject to greater than normal SBA oversight compared to other SBA Lenders in the same peer group. Oversight measures can include (but are not limited to) additional reviews or assessments, requests for corrective action plans, and/or removal from delegated loan programs, depending upon the level of activity and peer group.

Composite 5—The SBA operations of an SBA Lender rated 5 are considered well below average in all or nearly all of the rating components described in this Notice. An SBA Lender rated a 5 is most likely to have changes in any of its component factor rates, and have the greatest likelihood to have its component factors and overall composite rating demonstrate instability or negative performance from one quarter to the next. An SBA Lender rated 5 probably has well above average previous (12 months) purchase rates, and well above average current problem loan rates that predict future purchase rates above its peer group. Generally, loans in the portfolio of an SBA Lender rated 5 demonstrate less-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. An SBA Lender rated 5 likely has a record of significant SBA program compliance issues as demonstrated through on-site or off-site reviews and assessments (of mid-size and large SBA Lenders). Based on the substantial weaknesses outlined in this composite rating, SBA Lenders rated a 5 present SBA with the highest level of risk, and are thus subject to extensive SBA oversight compared to other SBA Lenders in the same peer group. Oversight measures can include (but are not limited to) additional reviews or assessments, requests for corrective action plans, and/or removal from delegated loan programs, depending upon the level of activity and peer group.

The descriptions within each composite rating are not meant as definitions of the ratings, but are given to provide, in general, the characteristics an SBA Lender receiving a particular rating may exhibit. Consequently, an SBA Lender assigned a particular composite rating may not exhibit every characteristic described for that rating, nor is SBA's action limited to those stated in the descriptions.

In some cases, SBA may have reason to believe that an SBA Lender's calculated composite rating may not fully reflect the level of risk that an individual SBA Lender presents. In those cases, SBA may override the composite risk rating (either positively or negatively) and assign a different composite score. Should a decision be made to override the composite score, SBA will provide the SBA Lender with an explanation of the reason(s) for the override. More information on overrides of composite ratings is provided in the overriding factors section of this Notice.

SBA's composite ratings system utilizes a numeric scale similar to rating systems used by bank regulators and other federal loan guarantors. For example, SBA's composite rating of 1 is similar to that of a bank regulator in that it is indicative of an institution with strong performance and requiring limited regulatory oversight. SBA's rating system is similar to those of other federal loan guarantors because it measures risk and portfolio performance of loan portfolios guaranteed by SBA, rather than measuring the quality of the entire institution.

Rating Components

The 4 Common Components for 7(a) Lenders

SBA's Risk Rating System for 7(a) Lenders features four common component factors. The four common rating components are defined below.

(i) Past 12 Months Actual Purchase Rate—The Past 12 Months Actual Purchase Rate is an historical measure of SBA purchases from the 7(a) Lender in the preceding 12 months. Thus, this component provides a measure of 7(a) Lender performance and risk as indicated by actual SBA purchases. SBA calculates this ratio by dividing the sum

of total gross dollars of the 7(a) Lender's loans purchased during the past 12 months (numerator) by the sum of total gross outstanding dollars of their SBA loans outstanding at the end of the 12-month period, plus gross dollars purchased during the past 12 months (denominator).

(ii) Problem Loan Rate—The Problem Loan Rate provides an indication of current 7(a) Lender risk. This problem loan indicator helps measure 7(a) Lender performance and risk by showing current delinquencies and liquidations, as well as predicting potential future purchases by SBA. Calculated using a numerator of total gross dollars of loans 90 days or more delinquent plus gross dollars in liquidation. The denominator is total gross dollars outstanding. Active purchases, dollars that are purchased but not yet charged off, are excluded from this figure.

(iii) 3 Months Change in Small Business Predictive Scores (SBPS)—The SBPS is a portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. SBPS is a proprietary calculation provided by Dun & Bradstreet, under contract with SBA, and is compatible with Fair, Isaac & Co.'s ''Liquid Credit'' origination score. This component signals increasing or declining purchase risk by measuring changes in borrower credit trends, and acts as a predictor of possible future loan delinquencies, liquidations, and SBA purchases. The 3 months change in SBPS is calculated by measuring the percentage change, on a dollar-weighted average basis, of the SBPS on all outstanding SBA loans held by the 7(a) Lender, from the previous quarter to the current quarter.

(iv) Projected Purchase Rate—The Projected Purchase Rate is a predictive measure of the probability of the amount of SBA guaranteed dollars in a 7(a) Lender's portfolio that are likely to be purchased by SBA. This factor uses credit bureau data on a 7(a) Lender's individual SBA loans to project the purchase rate of a 7(a) Lender's SBA portfolio. It is a 12-month projection of future performance based on the most current credit data on a borrower's payment history. For each of a 7(a) Lender's SBA loans outstanding, SBA multiplies the amount of guaranteed loan dollars outstanding by the probability of its purchase (as determined by the SBPS of the individual loan) and totals the sum of each individual loan outstanding. This total (numerator) is then divided by the 7(a) Lender's total SBA-guaranteed dollars outstanding (denominator).

The 3 Common Components for CDCs

SBA's quantitative Risk Rating System for CDCs features three common component factors. The three common rating components are defined below.

(i) Past 12 Months Actual Purchase Rate—The Past 12 Months Actual Purchase Rate is an historical measure of SBA purchases from the CDC in the preceding 12 months. Thus, this component provides a measure of CDC performance and risk as indicated by actual SBA purchases. SBA calculates this ratio by dividing the sum of total SBA gross dollars of the CDC's loans purchased during the past 12 months (numerator) by the sum of total SBA gross dollars of their SBA loans outstanding at the end of the 12-month period, plus total SBA gross dollars purchased during the past 12 months (denominator).

(ii) Problem Loan Rate—The Problem Loan Rate provides an indication of current CDC risk. This problem loan indicator helps measure CDC performance and risk by showing current delinquencies and liquidations, as well as predicting potential future purchases by SBA. Calculated using a numerator of total gross dollars of loans 90 days or more delinquent plus gross dollars in liquidation. The denominator is total gross dollars outstanding. Note that for 504 only, active purchases, dollars that are purchased but not yet charged off, that are in liquidation (loan status of Liquidation or Purchase Pending) must be added back into the denominator, as they are not included in the outstanding figure. (This is because as a normal function of 504, nearly all loans in Liquidation are active purchases.)

(iii) Average Small Business Predictive Scores (SBPS)—The SBPS is a portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. SBPS is a proprietary calculation provided by Dun & Bradstreet, under contract with SBA, and is compatible with Fair, Isaac & Co.'s ''Liquid Credit'' origination score. This component provides an indication of the relative credit quality of the loans in a CDC's SBA portfolio. The score is calculated from the average SBPS score of the loans in a CDC's portfolio, weighted by each loan's guaranteed loan dollars outstanding.

Each of the common components described above reflects a different means of measuring an SBA Lender's risk to SBA in terms of loan purchase data. Loan purchase metrics provide a core gauge of SBA lending success and program risk. SBA believes a Risk Rating System emphasizing purchase indicators provides a good measure of SBA lending risk because purchases are a strong indicator of the cost to SBA, and when tested correlated with net losses (purchase less recoveries). In addition, loan purchases are resource intensive and an administrative expense to SBA that may affect SBA's ability to provide further assistance to small businesses. Finally, SBA is a ''gap'' lender, and purchases can be a prime indicator of the failure of the financing to assist in the growth and development of small businesses.

Overriding Factors

In addition to the common components calculated through the use of loan performance factors, the Risk Rating System allows for consideration of additional factors. The occurrence of these factors may lead SBA to conclude that an individual SBA Lender's composite rating is not fully reflective of its true risk. Therefore, the Risk Rating System provides for the consideration of overriding factors, which may only apply to a particular SBA Lender or group of SBA Lenders, and permit SBA to adjust an SBA Lender's overall composite rating. The allowance of overriding factors in helping determine an SBA Lender's risk rating enables SBA to use key risk factors that are not necessarily applicable to all SBA Lenders, but indicate a greater or lower level of risk from a particular SBA Lender than that which the calculated score provides.

One of the most important overriding factors is an SBA Lender's on-site risk-based reviews/assessments usually performed on SBA's relatively large SBA Lenders, or that may (under extraordinary circumstances) be performed on other SBA Lenders whose performance demonstrates a highly unusual deviation from their peer group. SBA conducts on-site reviews of large SBA Lenders, performs safety and soundness examinations of SBA Supervised Lenders (SBLCs and Non-Federally Regulated Lenders), and uses certain off-site evaluation measures for less active SBA Lenders. Consequently, these assessments, as a factor, may only be available for a fraction of SBA's approximately 5,101 SBA Lenders (as of 12/31/2006). Examples of other overriding factors that may be considered are: Early loan default trends; purchase rate or projected purchase rate trends; abnormally high default, purchase or liquidation rates; denial of liability occurrences; lending concentrations; rapid growth of SBA lending; inadequate, incomplete, or untimely reporting to SBA or inaccurate

submission of required fees to SBA; and enforcement actions of regulators or other authority. This list is not all inclusive; however, SBA does not expect any of the overriding factors to affect a significant number of composite scores.

SBA has and will continue to perform annual validation testing on the Risk Rating System, and will further refine the system as necessary to improve the predictability of its risk scoring.

Lender Portal

Overview

SBA communicates SBA Lender performance to SBA Lenders through the use of SBA's Lender Portal (Portal). The Portal allows SBA Lenders to view their own quarterly performance data, including their current historical composite risk rating. SBA Lenders can also access data on peer group and portfolio averages. Consequently, an SBA Lender is able to gauge its performance relative to its peer group and the portfolio norm. While SBA Lenders may view their ratings, their performance indicators, and peer and portfolio averages, they are not able to view the individual ratings and performance indicators of other SBA Lenders. SBA has added all previous quarters' data to the portal.

Portal Data

SBA updates the Portal data each quarter approximately six to eight weeks after a calendar quarter ends. SBA Lenders can now access up to eight quarters of data on SBA Lender performance.

Correcting Portal Data

Portal data includes both summary performance and credit quality data. Because summary performance data is largely derived from data that SBA Lenders provide to SBA through 1502 and 172 Reports, SBA Lenders bear much of the responsibility for ensuring data accuracy. If an SBA Lender reviews its performance components and they do not comport with its own data records, the SBA Lender should confirm the accuracy of the underlying data. If the SBA Lender determines that the data is inaccurate, it should seek to amend any incorrect data through SBA's normal processing channels (for example—for loan performance data, SBA Lender should contact SBA's fiscal and transfer agent).

Credit quality data used to help establish certain component scores is derived from credit bureau reports of the borrower business and its principals or guarantors. To the extent that credit quality data relies on information that an SBA Lender provides on the business, its principals, or guarantors contained in the loan application and as required to be updated by the SBA Lender, the SBA Lender must take responsibility for ensuring this information is correct, complete, and updated. SBA recognizes that underlying borrower credit data cannot be changed by SBA or an SBA Lender. Therefore, any changes to data provided to credit bureaus must be reported directly to Dun & Bradstreet or Trans Union, as appropriate, by the borrower. All corrections to the Portal data (both summary performance and credit quality data) will be reflected in the quarterly update following the quarter in which the correction is entered.

Portal Access

SBA Lenders with at least one outstanding SBA loan may apply for the Portal access. Currently, SBA issues only one Portal user account per SBA Lender; however, we are working with our contractors on the possibility of increasing the number of Portal user accounts per SBA Lender. SBA will provide a notice to SBA Lenders if we are able to provide multiple user accounts. SBA Lenders must submit initial requests for a Portal user account (or requests to switch or terminate a user) by regular or overnight mail to SBA at the following address: Office of Lender Oversight—Capital Access, Suite 8200; Mail Code 7011, ATTN: Lender Portal, U.S. Small Business Administration, 409 Third Street, SW., Washington, D.C. 20416.

SBA Lenders must take the following steps in requesting Portal access:

1. Request must be made by a senior officer of the SBA Lender (Senior VP or above).

2. Request must be sent via regular or overnight mail to the address provided above.

3. Request must be made using the SBA Lender's stationery.

4. Request must include the user's business card.

5. The stationery and business card should include the SBA Lender's name and address.

6. The request should include the following data:

(a) SBA FIRS ID Number(s).

(b) Account user's name.

(c) Account user's title.

(d) Account user's mailing address at the SBA Lender.

(e) Account user's telephone number at the SBA Lender.

(f) Account user's e-mail address at the SBA Lender.

(g) Requesting officer's name.

(h) Requesting officer's title.

(i) Requesting officer's mailing address at the SBA Lender.

(j) Requesting officer's telephone number at the SBA Lender.

(k) Requesting officer's e-mail address at the SBA Lender.

Once SBA receives and approves the user request, the Agency will forward the approval to SBA's Portal contractor for issuance of a user account name and password. The Portal contractor will e-mail the user his or her user name and password within approximately two weeks of account approval. The user can then access its data by logging into the SBA Lender Portal web page at *https://pdp.dnb.com/pdpsba/pdplogin.asp.*

SBA Lender Portal Responsibilities

SBA Lenders are responsible for complying with SBA's requirements in obtaining and maintaining the Portal user accounts and passwords as set forth below and as published from time to time. SBA Lenders are also responsible for timely informing SBA to terminate or switch an account if the person to whom it was issued no longer holds that responsibility for the SBA Lender. Upon accessing the SBA Lender Portal, SBA Lenders must take full responsibility for protecting the confidentiality of the user password and SBA Lender risk rating information and for ensuring the security of the data.

Confidentiality Agreement

By clicking on the Portal log-in button to access the Portal, SBA Lender agrees to use the Confidential Information (defined in the Portal) contained in the Portal only for confidential use within its own immediate corporate organization, and to hold and maintain the Confidential Information in confidence in accordance with the terms of the Agreement. SBA Lender agrees to restrict access to the Confidential Information to those of its officers and employees who have a legitimate need to know such information for the purpose of assisting the SBA Lender in improving the SBA Lender's 7(a) or 504 program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management (each referred to as a ''permitted party''), and to those for whom SBA has approved access by prior written consent and for whom access is required by applicable law or legal process. If such law or process requires SBA Lender to disclose the Confidential Information to any person other than a permitted party, SBA Lender agrees to promptly notify SBA and SBA's Information Provider (defined below) in writing so that SBA

and the Information Provider have, within their sole discretion, the opportunity to seek appropriate relief such as an injunction or protective order prior to SBA Lender's disclosure. In addition, SBA Lender agrees to ensure that each permitted party is aware of the requirements of the Agreement and to ensure that each such permitted party agrees to the terms and conditions. SBA Lender agrees not to disclose, and agrees to protect from disclosure, SBA Lender's password to enter the Portal. Further, any disclosure of Confidential Information other than as permitted by the Agreement may result in appropriate action as authorized by law. The Confidentiality Agreement also provides that SBA Lender agrees to indemnify and hold harmless each of SBA and any provider of the Confidential Information from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from the unauthorized use or disclosure of the Confidential Information. ''Information Provider'' means Dun & Bradstreet. (Mail Provider Information notice to Dun & Bradstreet, Legal Department, 103 JFK Parkway, Short Hills, NJ 07078.)

No information contained in the Portal shall be relied upon for any purpose other than SBA's lender oversight and SBA's portfolio management purposes. In addition, SBA Lender acknowledges and agrees that the Confidentiality Agreement is for the benefit not only of the SBA but also of any party providing the Confidential Information. Any such party shall have the right and standing to pursue all legal and equitable remedies against the SBA Lender in the event of unauthorized use or disclosure.

Portal Inquiries

For general inquiries, an SBA Lender may submit its inquiry by e-mail to *lender.portal@sba.gov.* If an SBA Lender needs to speak to an individual on a non-technical matter, it may contact Paul Bishop, Institutional Financial Analyst at 202–205–7516. SBA advises an SBA Lender to state upfront its SBA Lender name, address, FIRS number, and user name to expedite processing of all inquiries.

(Authority: 15 U.S.C. 634(b)(7), and 15 U.S.C. 687(f))

Dated: May 8, 2007.

Steven C. Preston,

Administrator.

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SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC) Committee Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that the U.S. Small Business Administration, Audit and Financial Management Advisory Committee (AFMAC) will host a federal public meeting on Wednesday, May 23, 2007 at 8 a.m. The meeting will take place at the U.S. Small Business Administration, 409 3rd Street, SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416. The purpose of this meeting is to discuss the SBA's FY 2006 audit remediation, FY 2007 Financial Reporting, FY 2007 Credit Subsidy Modeling, A–123 Internal Control Program, Fraud Detection and Prevention Measures, Information System Security, Performance Management Framework, FY 2007 PAR Content and Production and FY 2007 Financial Audit.

Anyone wishing to attend must contact Jennifer Main in writing or by fax. Jennifer Main, Chief Financial Officer, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, phone: (202) 205–6449, fax: (202) 205–6969, e-mail: *Jennifer.main@sba.gov*.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–9416 Filed 5–15–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–0038]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/States, SVES Files)—Match 6010

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program which is scheduled to expire on June 30, 2007.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that SSA is currently conducting with the States.

DATES: SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(l) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: May 8, 2007.

Manuel J. Vaz,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with the States

A. PARTICIPATING AGENCIES

SSA and the States.

B. PURPOSE OF THE MATCHING PROGRAM

The purpose of this matching program is to establish the conditions, safeguards and procedures under which the States may obtain SSN verification and certain SSA information relating to the eligibility for, and payment of, Social Security benefits. This information is available from various SSA systems of records.

Individual agreements with the States will describe the information to be disclosed and the conditions under which SSA agrees to disclose such information.

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

This matching program is carried out under the authority of the Privacy Act of 1974, as amended; sections 1137 and 1106 of the Social Security Act; Pub. L. 108–458; and SSA's Privacy Act Regulations (20 CFR 401.150).

D. CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCHING PROGRAM

States will provide SSA with names and other identifying information of appropriate benefit applicants or recipients. Specific information from participating States will be matched, as provided in the agreement for the specific programs, with the following systems of records maintained by SSA.

1. Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058);
2. MBR, SSA/ORSIS (60–0090);
3. SSR/SVB, SSA/ODSSIS (60–0103).

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Individual State matching agreements under the matching program will become effective upon the effective date of this matching program or the signing of the agreements by the parties to the individual agreements, whichever is later. The duration of individual State matching agreements will be subject to the timeframes and limitations contained in this matching program.

[FR Doc. E7–9395 Filed 5–15–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5763]

Overseas Security Advisory Council (OSAC) Meeting Notice

Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 6, 2007 at the U.S. Secret Service, Washington, DC. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4) and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial information that is considered privileged and confidential, as well as discussion of law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: May 7, 2007.

Patrick D. Donovan,

Acting Director of the Diplomatic Security Service, Department of State.

[FR Doc. E7–9424 Filed 5–15–07; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 4, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28129.

Date Filed: May 3, 2007.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: May 24, 2007.

Description: Application of Oy Air Finland Ltd., requesting an exemption and foreign air carrier permit to engage in charter foreign air transportation of persons, property, and mail between a point or points in Finland, on the one hand and a point or points in the United States, on the other hand, via intermediate points.

Docket Number: OST–2007–28149.

Date Filed: May 4, 2007.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: May 25, 2007.

Description: Application of British Airways Plc, requesting issuance of an amended foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind and Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and beyond; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in Part 212 of the Department's Economic Regulations; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future. British Airways further requests a corresponding exemption to the extent necessary to enable it to provide the service described above pending issuance of an amended foreign air carrier permit and such additional or

other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–9408 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Adoption of the U.S. Air Force Final Environmental Impact Statement and Approval of the Federal Aviation Administration Record of Decision for the New Mexico Training Range Initiative (NMTRI)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Adoption of the U.S. Air Force (USAF) Final Environmental Impact Statement (FEIS) and Approval of the FAA Record of Decision (ROD).

SUMMARY: The FAA is announcing its Adoption of the United States Air Force (USAF) Final Environmental Impact Statement (FEIS) for the New Mexico Training Range Initiative and approval of the FAA Record of Decision (ROD). The New Mexico Training Range Initiative (NMTRI) is the USAF initiative to create airspace that allows mainly F–16 and aircrews to receive much needed realistic combat training while maximizing their training time. NMTRI includes the Pecos MOA complex.

DATES: *Effective Date:* May 7, 2007.

ADDRESSES: Federal Aviation Administration, Central Services Area, System Support Group, 2601 Meacham Blvd., Fort Worth, TX 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Nan Terry, Federal Aviation Administration, Central Services Area, System Support Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, (817) 222–5594.

SUPPLEMENTARY INFORMATION: The USAF, lead agency for NMTRI, published availability of the Final EIS on October 20, 2006 in the **Federal Register** (Volume 71, Number 203, Pages 61967–61968), in accordance with the National Environmental Policy Act (NEPA) as amended. The determinations on the project are outlined in the FAA's ROD, which was approved on May 4, 2007.

For copies of the USAF Final Environmental Impact Statement, contact: Ms. Sheryl Parker at (757) 764–9334. A copy of the FAA Adoption and Record of Decision can be obtained by contacting Ms. Nan Terry in the **FOR FURTHER INFORMATION** section above.

Issued in Washington, DC, or May 7, 2007.

Edith V. Parish,

Acting Manager, Environmental Programs Group, System Operations Airspace & Aeronautical Information Management, Air Traffic Organization.

[FR Doc. 07–2393 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of the U.S. Air Force Supplemental Final Environmental Impact Statement and FAA Approval of the Record of Decision for the Realistic Bomber Training Initiative (RBTI)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Adoption of the USAF Supplemental Final Environmental Impact Statement and Issuance of the FAA Record of Decision (ROD).

SUMMARY: The FAA is announcing—adoption of the United States Air Force (USAF) Final Supplemental Environmental Impact Statement (SEIS) for the Realistic Bomber Training Initiative (RBTI), and approval of the FAA Record of Decision (ROD). The USAF proposal was to create airspace that allows B–52 and B–1 aircrews to receive much needed realistic combat training while maximizing their training time. RBTI includes the Lancer Military Operating Area (MOA) and the Instrument Military Training Route 178 (IR–178).

EFFECTIVE DATES: April 11, 2007.

ADDRESSES: Federal Aviation Administration, Central Services Area, System Support Group, 2601 Meacham Blvd., Fort Worth, TX, 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Nan Terry, Federal Aviation Administration, Central Services Area, System Support Group, 2601 Meacham Blvd, Fort Worth, Texas, 76137, (817) 222–5594.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1997, the National Environmental Policy Act (NEPA) process for RBTI began with publication of the Notice of Intent (NOI) in the **Federal Register**. The Draft Environmental Impact Statement (EIS) was published in March 1999 (Volume 64, Number 53). Fifteen public hearings were held in 11 communities. The Final EIS, published and made available to the public in January 2000, identified the USAF preferred alternative as Alternative B.

In March 2000, the USAF Deputy Chief of Staff for Air and Space Operations issued its initial Record of Decision (ROD) ((Air Force 2000b)), choosing Alternative B for implementation. They then submitted the formal airspace proposal to establish the Lancher Military Operating Area (MOA) to the FAA in April 2000. After conducting its own independent evaluation of the environmental documentation and completing the aeronautical circularization process, the FAA adopted the Final EIS and gave final approval for the RBTI airspace on December 11, 2001, with an effective date of February 21, 2002.

The USAF and FAA were sued by parties alleging, among other things that there was a failure to comply with NEPA. In March 2003, the U.S. District Court, Northern District of Texas, Lubbock Division, granted summary judgment in favor of the United States. The plaintiffs appealed to the U.S. Court of Appeals for the Fifth Circuit. One of the plaintiffs also filed a separate petition in the Fifth Circuit alleging that the FAA had failed to comply with NEPA in approving the RBTI airspace. In a single opinion covering both the USAF and FAA cases, the Court of Appeals (October 2004) upheld the adequacy of the Final EIS in most respects, but remanded the action to the USAF and FAA to prepare a Supplemental EIS (SEIS) addressing the impact of wake vortices on ground structures, and to the USAF for compliance with the Council on Environmental Quality and USAF internal requirements for addressing FAA comments.

Public Involvement Pertaining to the SEIS

The Air Force, in cooperation with the FAA, published a Notice of Availability for the Draft Supplemental EIS in the **Federal Register** on November 18, 2005 marking the beginning of the official comment period. Between December 5, 2005 and January 28, 2006, the Air Force and FAA conducted a total of five public hearings at locations in the proximity of the proposed action and alternatives. Lubbock, Texas was added as the fifth public hearing location based on requests from interested citizens.

Notice of Availability of the Final SEIS appeared in the **Federal Register** on August 11, 2006 (Volume 71, Number 155) with a comment period of thirty-one (31) days. Additional information regarding the public

involvement process can be found in the USAF ROD dated March 20, 2007.

Copies of the Final SEIS can be received by contacting Ms. Sheryl Parker at (757) 764–9334. The document is also available for review, during normal business hours, at the following locations:

Abilene Public Library	202 Cedar St.	Abilene, TX	79601
Alpine Public Library	203 N. 7th St.	Alpine, TX	79830
Amarillo Public library	P.O. Box 2171	Amarillo, TX	79189
Stonewall County Library	P.O. Box H	Aspermont, TX	79502
Reagan County	County Courthouse	Big Lake, TX	76932
Howard County	312 Scurry St.	Big Spring, TX	79720
Crane County Library	701 S. Alford St.	Crane, TX	79731
Dallam County Library	420 Denrock Ave.	Dalhart, TX	79022
Jeff Davis County Library	Court and Main Streets	Ft. Davis, TX	79734
Ft. Stockton Public Library	400 N. Water	Ft. Stockton, TX	79735
Kent County Library	P.O. Box 28	Jayton, TX	79258
Winkler County Library	307 S. Poplar	Kermit, TX	79745
Dawson Co. Public Library	P.O. Box 1264	Lamesa, TX	79331
Lubbock Library	1306 9th St.	Lubbock, TX	79401
Marfa City Municipal Library	P.O. Drawer U	Marfa, TX	79845
Irion County Library	P.O. Box 766	Merzton, TX	76941
Ward County Library	409 S. Dwight St.	Monahans, TX	79756
Ector County Library	321 W. 5th St.	Odessa, TX	79761
Reeves County Library	505 S. Park St.	Pecos, TX	79772
Post Public Library	105 E. Main St.	Post, TX	79356
City of Presidio Library	P.O. Box K	Presidio, TX	79845
Rankin Public Library	P.O. Box 6	Rankin, TX	79778
Rotan Public Library	404 E. Snyder Ave.	Rotan, TX	79546
Tom Green County System	113 W. Beauregard Ave.	San Angelo, TX	76903
Sierra Blanca Public Library	Sierra Blanca	Sierra Blanca, TX	79851
Scurry County Public Library	1916 23rd St.	Snyder, TX	79549
Sterling County Public Library	P.O. Box 1130	Sterling City, TX	76951
Taos Public Library	402 Camino de la Placita	Taos, NM	87571
City-County Library	Box 1018	Tahoka, TX	79373
Van Horn Library	P.O. Box 129	Van Horn, TX	79855

The FAA's determinations on the project are outlined in the FAA ROD, which was approved on April 11, 2007. A copy of the ROD can be received by contacting Ms. Nan Terry, in the For Further Information Section above.

Issued in Washington, DC, on May 7, 2007.

Edith V. Parish,

Acting Manager, Environmental Programs Group, System Operations Airspace & Aeronautical Information Management, Air Traffic Organization.

[FR Doc. 07–2394 Filed 5–15–07; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Limitation on Claims for the Campus Parkway

AGENCY: Federal Highway Administration (FWHA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). These actions relate to a proposed 7.25 km (4.5 mile) Campus Parkway, which would be a four-lane expressway beginning at the Mission Avenue Interchange on State Route 99 and extending north on new alignment to Yosemite Avenue, south and east of the City of Merced in Merced County, State of California. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the expressway project will be barred unless the claim is filed on or before November 13, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Edrie Vinson, Senior Environmental Specialist, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m. (Pacific Time), telephone (916) 498–5852, e-mail: *edrie.vinson@fhwa.dot.gov* or Kim Turner, Wildlife Biologist, Endangered Species Program, U.S. Fish and Wildlife Service, 2800 Cottage Way W–2605, Sacramento, CA 95825, telephone (916) 414–6577, e-mail: *kim_s_turner@fws.gov*. Margaret Lawrence, Senior Environmental Planner, California Department of Transportation, 1976 East Charter Way, Stockton, CA 95201, telephone (209) 948–7427, e-mail: *margaret_lawrence@dot.ca.gov* or Steve Rough, Project Manager, Merced County, 345 West 7th Street, Merced, CA 95340, telephone (209) 385–7601, e-mail: *SRough@co.merced.ca.us*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing approvals for the following expressway project in the State of California: Campus Parkway between the Mission Avenue Interchange on State Route 99 in Merced County. This project would improve existing and future circulation east of the City of Merced and provide access to planned developments north and east of the city as well as the first phase of the Merced Campus of the University of California. This would be accomplished by constructing a four-lane expressway south and east of the City of Merced, in Merced County, from the Mission Avenue Interchange at State Route 99 north to Yosemite Avenue northeast of the city.

The actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement (FEIS) for the project, approved on November

28, 2006, in the Record of Decision (ROD) issued on April 30, 2007, and in other documents in the FHWA project files. The FEIS, ROD, and other project records are available by contacting the FHWA or the California Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site *http://www.dot.ca.gov/dist10/d10projects/merced/reports.htm* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351); Federal-Aid Highway Act (23 U.S.C. 109).

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act (16 U.S.C. 1531–1544 and Section 1536), Migratory Bird Treaty Act (16 U.S.C. 703–712).

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470[f] *et seq.*).

5. *Social and Economic:* Civil Rights Act of 1964 (42 U.S.C. 2000[d]–2000[d][1]; Farmland Protection Policy Act (FPPA) (7 U.S.C. 4201–4209).

6. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11990 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: May 8, 2007.

Gene K. Fong,

Division Administrator, Federal Highway Administration, Sacramento, California.

[FR Doc. E7–9377 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7165, FMCSA–00–7918, FMCSA–00–8398, FMCSA–02–13411, FMCSA–03–14223, FMCSA–05–20027, FMCSA–05–20560]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 26 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 31, 2007. Comments must be received on or before June 15, 2007.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–00–7165, FMCSA–00–7918, FMCSA–00–8398, FMCSA–02–13411, FMCSA–03–14223, FMCSA–05–20027, FMCSA–05–20560, using any of the following methods.

- *Web site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 26 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 26 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Edmund J. Barron
William E. Beckley
Eddie M. Brown
Charles C. Chapman

Jeffery W. Cotner
John K. Fank
Bobby G. Fletcher
Lonny L. Ford
Larry G. Garcia
Raymond G. Hayden
Robert E. Hendrick
James A. Kneece
Joe S. Lassiter III
Gene A. Lesher, Jr.
Wallace F. Mahan, Sr.
Velmer L. McClelland
Anthony R. Miles
Raymond E. Morelock
Kenneth L. Nau
David W. Peterson
Frederick G. Robbins
Jose C. Sanchez-Sanchez
Francis L. Savell
David M. Stout
Daniel R. Viscaya
Daniel E. Watkins

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 26 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 33406; 65 FR 57234; 67 FR 67234; 70 FR 7545; 68 FR 13360; 70 FR 12265; 65 FR 66286; 66 FR 13825; 68 FR 10300; 70 FR 14747; 65 FR 78256; 66 FR 16311; 67 FR 76439; 68 FR 10298; 68 FR 10301; 68 FR 19596; 70 FR 16886; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 30997). Each of these 26 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 15, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 26 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 9, 2007.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E7–9338 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27387]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 57 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 15, 2007.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2007–27387 using any of the following methods:

- Web site: *http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the

on-line instructions for submitting comments.

All submissions must include the Agency name and docket number for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices. To read background documents or comments received, go to *http://dms.dot.gov* or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 57 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

Darrell L. Allen

Mr. Allen, age 37, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Allen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Missouri.

Jeffery C. Badberg

Mr. Badberg, 31, has had ITDM since 1980. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Badberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class O operator's license from Nebraska, which allows him operate any non-commercial vehicle except motorcycles.

Kevin W. Bender

Mr. Bender, 23, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bender meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Karry J. Benfiet

Mr. Benfiet, 54, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Benfiet meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Ronnie T. Bledsoe

Mr. Bledsoe, 37, has had ITDM since 1986. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bledsoe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Ricky N. Blankenship

Mr. Blankenship, 48, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blankenship meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that

he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Kevin E. Blythe

Mr. Blythe, 46, has had ITDM since 1989. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blythe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Arkansas.

Clayton J. Bragg

Mr. Bragg, 30, has had ITDM since 1989. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bragg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana, which allows him to drive any vehicle with a gross vehicle weight rating of 16,000 pounds or less, except motorcycles.

James A. Broderick

Mr. Broderick, 69, has had ITDM since 1970. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Broderick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Montana.

Clifford O. Bull

Mr. Bull, 36, has had ITDM since 1995. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bull meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from South Carolina.

Richard M. Carey

Mr. Carey, 46, has had ITDM since 1990. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Cary W. Chase

Mr. Chase, 38, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chase meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Colorado.

Robert L. Chestnut

Mr. Chestnut, 68, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chestnut meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Dino J. Coli, Jr.

Mr. Coli, 53, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Oregon.

Larry E. Colson

Mr. Colson, 45, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Colson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Elijah N. Craft

Mr. Craft, 66, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Craft meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Leonard Cunningham

Mr. Cunningham, 56, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cunningham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B operator's license from Maryland, which allows him to drive non-commercial vehicles and combinations weighing 26,001 or more pounds gross vehicle weight, except tractors, trailers, etc.

LaVerne A. DeChausse

Mr. DeChausse, 49, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DeChausse meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jason E. Earlywine

Mr. Earlywine, 32, has had ITDM since 1976. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Earlywine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kentucky.

Eddie L. Edwards

Mr. Edwards, 51, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Edwards meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Leroy Finn

Mr. Finn, 66, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Finn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

John E. Fitch

Mr. Fitch, 52, has had ITDM since 1993. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fitch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Steven L. Garland

Mr. Garland, 57, has had ITDM since childhood. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class E operator's license from Missouri, which allows him to drive any non-commercial combination of motor vehicles with a gross vehicle weight less than 26,001 pounds.

William J. Gerlach

Mr. Gerlach, 66, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gerlach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Anthony Giulitto

Mr. Giulitto, 38, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Giulitto meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Francis J. Godwin

Mr. Godwin, 43, has had ITDM since 1992. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Godwin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Ricky A. Goss

Mr. Goss, 51, has had ITDM since 2002. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goss meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Robert J. Guilford

Mr. Guilford, 25, has had ITDM since 1990. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Guilford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Lucas C. Hansen

Mr. Hansen, 29, has had ITDM since 1990. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hansen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Ryan R. Harris

Mr. Harris, 30, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Dale R. Hass

Mr. Hass, 56, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hass meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Robert P. Haught

Mr. Haught, 38, has had ITDM since 1981. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haught meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable proliferative diabetic retinopathy. He holds a Class O operator's license from Michigan, which allows him to operate any motor vehicle except motorcycles and CMVs.

Troy O. Heathcock

Mr. Heathcock, 64, has had ITDM since 2000. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heathcock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Michigan.

Mark E. Hogmire

Mr. Hogmire, 42, has had ITDM since 1993. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hogmire meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class M operator's license from Virginia.

Matthew P. Horner

Mr. Horner, 31, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Horner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Scott D. Leland

Mr. Leland, 45, has had ITDM since 1972. His endocrinologist examined him

in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Dennis R. Mace

Mr. Mace, 61 has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mace meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Elizabeth A. Marsh

Ms. Marsh, 55, has had ITDM since 2006. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Marsh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Alabama.

Peggy A. Myers

Ms. Myers, 39, has had ITDM since 1988. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Myers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds an operator's license from Indiana, which allows her to drive any vehicle with a gross vehicle weight rating of 16,000 pounds or less, except motorcycles.

Frank C. Perrin

Mr. Perrin, 37, has had ITDM since 1997. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perrin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Herbert A. Pierce

Mr. Pierce, 40, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pierce meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Douglas F. Reinke

Mr. Reinke, 55, has had ITDM since 1990. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reinke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Carlos Rosa

Mr. Rosa, 43, has had ITDM since 2003. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rosa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Connecticut.

Nicholas F. Santacroce

Mr. Santacroce, 46, has had ITDM since 1991. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Santacroce meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Timothy S. Seitz

Mr. Seitz, 51, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seitz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does

not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Steven J. Shaw

Mr. Shaw, 24, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Donna B. Shehan

Ms. Shehan, 39, has had ITDM since 2006. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Shehan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds a Class D CDL from South Carolina.

Kenneth J. Shifton

Mr. Shifton, 56, has had ITDM since February, 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shifton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Rick G. Skonberg

Mr. Skonberg, 52, has had ITDM since 1995. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skonberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Alaska.

Stephanie B. Smith

Ms. Smith, 39, has had ITDM since 2006. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Washington.

Earl C. Smouse

Mr. Smouse, 49, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smouse meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

Randall J. Stoller

Mr. Stoller, 50, has had ITDM since 1987. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stoller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Peter A. Storm

Mr. Storm, 30, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Storm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D chauffeur's license from Louisiana.

Robert H. Thompson, Jr.

Mr. Thompson, 38, has had ITDM since 1994. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Louisiana, which allows him to operate any single motor vehicle under 10,000 pounds gross vehicle weight, any personal use recreational vehicle, and farm vehicles controlled and operated by a farmer.

Robert D. Toland

Mr. Toland, 50, has had ITDM since 1995. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Toland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Mark A. Webber

Mr. Webber, 46, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Jeffrey A. Withers

Mr. Withers, 39, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Withers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice.

We will consider all comments received before the close of business on the closing date indicated earlier in the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003. Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified in the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: May 9, 2007.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E7–9339 Filed 5–15–07; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule,'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted in San Diego, California. The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Friday, June 8 and Saturday, June, 9, 2007.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Friday, June 8, 2007 from 8:30 a.m. to 4:30 p.m. and Saturday, June 9, 2007 from 8 a.m. to 12 p.m. PDT at the Hilton San Diego Airport Hotel located at 1960 Harbor Island Drive, San Diego, CA 92101. Individual comments are welcomed and limited to 5 minutes per person. For more information and to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557. If you would like to have the TAP consider a written statement, please write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201, or you may post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: May 9, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9343 Filed 5–15–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Automated Commercial Environment (ACE): Terms and Conditions for Account Access of the ACE Secure Data Portal

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice sets forth a revision of the terms and conditions that must be followed as a condition for access to the Automated Commercial

Environment (ACE) Secure Data Portal (ACE Portal). These terms and conditions supersede and replace the Terms and Conditions documents previously signed and submitted to U.S. Customs and Border Protection (CBP) by ACE Portal Account Owners. The previous Terms and Conditions documents were not published in any public document but were provided to ACE Portal Account applicants after their acceptance into the test. For those ACE Portal Accounts already on file with CBP with the proper Account Owner listed, no further action is required by the ACE Portal Account Owner. The principal changes to the terms and conditions include a revised definition of ''Account Owner'' to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner. These terms and conditions do not affect participants in ACE who have not established Portal Accounts but who do participate via less formal Non-portal Accounts.

EFFECTIVE DATES: The terms and conditions set forth in this document must be followed as a condition for access to the ACE Portal effective immediately.

ADDRESSES: Comments concerning this notice should be submitted to Michael Maricich via e-mail at *CSPO@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Operational aspects for importers and brokers: Ruthanne Kenneally (202) 863–6064. Operational aspects for carriers: James Swanson at *james.d.swanson@dhs.gov.* Systems or automation aspects: Michael Maricich at *michael.maricich@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2002, the former U.S. Customs Service, now U.S. Customs and Border Protection (CBP), published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE). The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer's account structure. This General Notice announced that importers and authorized parties would be allowed to access their customs data via a web-based Account Portal.

The notice set forth eligibility criteria for companies interested in establishing accounts (commonly known as Portal Accounts) accessible through the ACE Portal, and limited participants in the ACE test to importers already participating in the Customs Trade Partnership Against Terrorism (C–TPAT) Program who had access to the Internet. Upon an applicant's selection into the test, Customs would require additional information for inclusion in the account profile.

Certain subsequent notices eliminated the requirement of participation in the C–TPAT Program (*see, e.g.*, General Notice published in the **Federal Register** on February 1, 2005 (70 FR 5199)) and expanded the universe of eligible participants in the ACE test and the types of ACE Portal Accounts, while establishing guidelines for account management, as described below.

On February 4, 2004, CBP published two General Notices in the **Federal Register**, which established the ACE Truck Carrier Accounts and opened the application period for authorized importers and their designated brokers to participate in the NCAP test to implement the Periodic Monthly Statement (PMS) process (*see* 69 FR 5360 and 69 FR 5362, respectively). Brokers were invited to establish Broker Accounts in ACE in order to participate in the NCAP test to implement PMS.

In both February 4, 2004, General Notices, CBP advised participants that they could designate only one person as the Account Owner for the company's ACE Portal account. The Account Owner was identified as the party responsible for safeguarding the company's ACE Portal account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal account information, and ensuring the strict control of access by authorized persons to the ACE Portal information.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal test generally and informing interested parties that once they had been notified by CBP that their request to participate in the ACE Portal test had been accepted, they would be asked to sign and submit a Terms and Conditions document. CBP subsequently contacted those participants and asked them to also sign and submit a Power of Attorney form and an Additional Account/Account Owner Information form.

Non-Portal Accounts

CBP has also enabled certain parties to participate in any ACE test without establishing ACE Portal accounts. On October 24, 2005, CBP published a General Notice in the **Federal Register** (70 FR 61466) announcing that importers, whether or not C–TPAT certified, could become ACE non-portal accounts and participate in the PMS test, under certain conditions. Additionally, on March 29, 2006, CBP published another General Notice in the **Federal Register** (71 FR 15756) announcing that truck carriers who do not have ACE Truck Carrier Accounts may use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system, via EDI messaging. Parties choosing to participate in any ACE test without an ACE Portal account, such as those identified here and any others that CBP may identify in the future, are not bound by the Terms and Conditions described below.

Terms and Conditions Document

The purpose of the Terms and Conditions document that participants were asked to sign was to set forth the obligations and responsibilities of those parties accessing an ACE Portal account on behalf of an Account. An ACE Portal account, as employed in that document, referred to a party who had volunteered to participate in any ACE test and had an ACE Portal account. Presently, ACE Portal accounts may be established by any of the following business categories meeting the below listed eligibility requirements:

1. Importer:
- Possesses one or more Importer of Record (''IR'') numbers; and
- Has access to the Internet (*see* 67 FR 21800, May 1, 2002)

2. Broker:
- Possesses the ability to make periodic payment via ACH Credit or ACH Debit;
- Possesses the ability to file entry/entry summary via ABI (Automated Broker Interface); and
- Has access to the Internet (*see* 69 FR 5362, February 4, 2004)

3. Carrier:
- Possesses a Standard Carrier Alpha Code (SCAC); and
- Has access to the Internet (*see* 69 FR 5360, February 4, 2004)

To date, CBP has required that the Account Owner sign and submit the Terms and Conditions document prior to accessing the ACE Portal. If the Terms and Conditions document was not

signed and submitted to CBP, CBP would deny access to the ACE Portal for the Account Owner. The trade community has provided numerous comments to CBP describing the burdens imposed by the requirement that the Account Owner sign and submit the Terms and Conditions document prior to accessing the ACE Portal. In response, CBP is publishing the terms and conditions governing ACE Portal access in this **Federal Register** Notice (FRN). The publication of the terms and conditions in this FRN replaces the requirement that the Account Owner sign and submit a Terms and Conditions document to CBP.

Changes in Policy

Any Terms and Conditions document previously signed and submitted by any Account Owner is null and void, having been superseded and replaced by the Terms and Conditions set forth in this FRN. Any present ACE Portal account with a Terms and Conditions document already on file with CBP will not be required to change the designation of its Account Owners unless the Account would prefer to designate a new Account Owner, consistent with the definition of Account Owner that is set forth below. If the Account chooses to change its Account Owner designation, the Account will be required to sign and submit to CBP an Account Owner Designation/Authorization form.

The Terms and Conditions set forth in this FRN will appear on the introductory screen for the ACE Portal. Any party seeking access to the ACE Portal will be required to accept those Terms and Conditions as set forth on the screen and in this FRN. As ACE expands and includes other portal account types beyond the importer, broker and carrier ACE Portal accounts that exist today, further modifications to the Terms and Conditions may occur.

New Definition of Account Owner

With the publication of this FRN, CBP is also amending the requirements set forth in the General Notices published on February 4, 2004 (and referenced above) pertaining to the designation of the ''Account Owner.'' Specifically, those notices limited the participants to the designation of only one person as the Account Owner who would be responsible for the company's portal account information. The Terms and Conditions documents presently on file with CBP define the Account Owner as ''any individual identified and authorized by the Account to serve as the representative of the Account relating to the administration of access to the Account's information through the ACE Portal.''

Upon review, CBP is revising the definition of ''Account Owner.'' This revised definition of the Account Owner supersedes and replaces any former definition for the Account Owner. Whereas the former definition of Account Owner referred to a *person* or *individual,* CBP has now determined that a more appropriate definition for the Account Owner includes any ''legal entity'' identified and authorized by the Account to serve as the representative of that Account relating to the administration of access to the Account's information through the ACE Portal. Accordingly, the Account may also choose to designate itself to be its own Account Owner.

The revisions of the Terms and Conditions set forth in this FRN include additional requirements, specifically those which require notice to CBP when there has been a material change in the status of the Account and/or Account Owner, as well as access to historical information in the event of the transfer of control of an IR number, filer code, or SCAC.

Terms and Conditions

I. Overview

This document sets forth the obligations and responsibilities that must be followed as a condition for access to the Automated Commercial Environment (''ACE'') Secure Data Portal (hereinafter, ''ACE Portal'').

Information contained in ACE and accessed through the ACE Portal includes confidential commercial or financial information that pertains to the Account. Information in ACE is, generally, protected under the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905). No private party will be permitted access to information pertaining to an account absent the authorization of the Account. No governmental agency outside of the Department of Homeland Security will be permitted access to information that pertains to an account, unless the access is otherwise authorized by law (*e.g.*, Freedom of Information Act, Privacy Act, Trade Secrets Act, etc.).

Information accessed through the ACE Portal that derives from another Agency of the United States Government is subject to the ''Third Party Rule,'' which separately requires the approval of that other agency before the information may be disseminated beyond the Account Owner and any Account User.

CBP reserves the right to monitor access to the ACE Portal. CBP also reserves the right to disapprove any authorization of access to the ACE Portal for reasons pertaining to the security of ACE, mission of CBP, or National Security. The fact that one participates in the ACE test is not confidential.

II. Account

The term ''Account'' as employed in this document refers to a business entity that has volunteered to participate in an ACE test. The Account may designate only one Account Owner for the Account.

III. Account Roles

The Account Owner is any individual or other legal entity identified and authorized by the Account to serve as the representative of the Account and is responsible for the administration of access to the Account's information through the ACE Portal.

If the Account chooses to designate a legal entity other than an individual as the Account Owner, the Account Owner must also designate an individual as the single point of contact for the Account. In all cases, there must be a single individual who is responsible for the administration of access to the Account's information through the ACE Portal.

A Proxy Account Owner is any individual identified and authorized by either the Account or the Account Owner to access information that pertains to the Account through the ACE Portal. The authority of the Proxy Account Owner includes the designation of other Account Users, but may be limited by the Account Owner. In no case may a Proxy Account Owner designate other Proxy Account Owners.

An Account User is any individual identified and authorized by the Account Owner or Proxy Account Owner to access information that pertains to the Account through the ACE Portal.

IV. Responsibilities

A. The Account

1. The Account must separately authorize the Account Owner to exercise any and all authority, apparent or otherwise, to fulfill the enumerated responsibilities contained herein and in any applicable **Federal Register** Notice, including the authority to access and control information associated with newly acquired IR number(s), SCAC(s), and/or filer code(s).

2. The Account must complete and submit to CBP the Account Owner Designation/Authorization form, located on the CBP website (*http://*

www.cbp.gov) as proof of designation of the Account Owner. This document must be signed by both the Account and the Account Owner and submitted to the Account Administrator. In cases in which the Account Owner is an entity, the form must be signed by the single point of contact of the Account.

B. Account Owner

1. The Account Owner, as the representative of the Account with respect to all information submitted by or on behalf of the Account, is responsible for safeguarding Account information, authorizing user access to the ACE Portal account information, controlling all disclosures of that information, enforcing ACE Portal access limitations, and ensuring the strict control of access by authorized persons to the ACE Portal information.

2. The Account Owner assumes liability for any disclosure of Account information or unauthorized access to the ACE Portal and holds CBP, its officers, agents, and employees harmless from the release of any such information.

3. The Account Owner administers and controls all Proxy Account Owners and Account User access, including the designation and limitation of access, to the ACE Portal. The Account Owner is authorized to grant full or limited access to information relating to the Account (including information protected by the Trade Secrets Act or Privacy Act), through the ACE Portal.

4. The Account Owner, if not an individual, shall designate an individual as the single point of contact for the Account relating to the administration of access to the Account's information through the ACE Portal.

C. All Parties

The Account Owner, Proxy Account Owner, and any Account Users are responsible for ensuring the accuracy and confidentiality of any information they submit through the ACE Portal to CBP, and are also responsible for complying with the record-keeping requirements in accordance with law including, but not limited to, 19 U.S.C. 1508 and 1509.

V. Failure To Access the Portal

The failure of an Account Owner to access the ACE Portal for a period of ninety (90) days, consecutively, will result in the termination of access to the ACE Portal. Access may be restored by calling the Help Desk or by following the ''forgot your password'' prompt found on the ACE Portal log-in page.

The failure of a Proxy Account Owner or an Account User to access the ACE Portal for a period of ninety (90) days, consecutively, will result in the termination of access to the ACE Portal for the Proxy Account Owner or Account User. Access may only be restored upon re-authorization by the Account Owner.

VI. Change in the Status of the Account or Account Owner

A. Change in the Status of the Account

1. The Account must provide notice to CBP as soon as practicable, relating to a material change to the status or condition of the Account, such as a transfer of IR number(s), SCAC(s), or filer codes(s). Any transfer of control of an IR number, SCAC or filer code, will require notification to the CBP assigned Account Manager or the ACE Portal Administrator by the acquiring and acquired parties. Until such notification, CBP will not alter access to the Portal. Some material changes will also require re-application. For example, any reorganization of an Account resulting in the creation of a new company and a new IR number, SCAC or filer code, will require re-application; this does not include the addition of a subsidiary. In the event of a division or spin-off from an Account, the Account will retain access to the ACE Portal, and the new business entity formed from the division or spin-off must apply for access.

2. In the event of a material change in the status of the Account, such as the transfer of IR number(s), SCAC(s), or filer codes(s), CBP will require a brief summary of the change, signed by both the acquiring and acquired parties, including, but not limited to, the following information:

a. Company names;

b. IR numbers acquired, transferred, sold, or divested;

c. Party transferring the IR number, filer code, and/or SCAC;

d. Party acquiring the IR number, filer code, and/or SCAC;

e. Address changes; and

f. Effective date of information control.

3. When the CBP assigned Account Manager or ACE Portal Administrator is notified of the transfer of IR number(s), SCAC(s) or filer code(s), ACE Portal access will be denied for the acquired company unless the acquiring company authorizes access to the acquired company.

B. Change in the Status of the Account Owner

1. The Account must provide notice to CBP, as soon as practicable, relating to a material change in the status of the Account Owner. A material change includes the resignation of the Account Owner. The Account must designate a new Account Owner to act on behalf of the Account after notifying CBP of the change. At such time that a new Account Owner is designated for the Account, the Account must submit a new Account Owner Designation/Authorization form to the CBP assigned Account Manager or Portal Administrator.

2. If the Account Owner is not an individual, the Account Owner must provide notice to CBP, as soon as practicable, relating to a material change to the status of the single point of contact. At such time that a new single point of contact is designated for the Account Owner, the Account Owner must submit a new Account Owner Designation/Authorization form to the CBP assigned Account Manager or Portal Administrator.

VII. Access to Historical Information

In the event of a transfer of control of an IR number, filer code, and/or SCAC, the acquiring company will obtain access to historical information associated with that IR number, filer code, and/or SCAC. In the event that the acquired company also requires access to the historical information associated with the transfer of control of an IR number, filer code, and/or SCAC, the acquired company's access to that information may be obtained by either downloading the historical information prior to the date of sale or the transfer of control of an IR number, filer code, and/or SCAC, or by making a Freedom of Information Act (FOIA) request to CBP of a download of that information after the sale or the transfer of control of an IR number, filer code, and/or SCAC. In the alternative, the acquired company may request to be made a user on the acquiring company's Account.

Dated: May 9, 2007.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E7–9350 Filed 5–15–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act)

that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board will be held on June 13, 2007, in the Capitol Room 5th Floor at the International Square Center, 1875 I Street NW., Washington, DC. The meeting is scheduled to begin at 8:30 a.m. and end at 4 p.m.

The Board advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed studies, the adequacy of the protocols and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public from 8:30 a.m. to 9 a.m. for the discussion of administrative matters and the general status of the program. The session will be closed from 9 a.m. to 4 p.m. for the Board's review of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 254–0183.

Dated: May 9, 2007.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–2395 Filed 5–15–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on June 11, 2007 in the Virginia Room, 2nd floor, at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue, NW., Washington, DC. The meeting will convene at 8 a.m. and adjourn at 5:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of veterans and to enhance development of tests and treatments for diseases particularly relevant to veterans.

At the June 11 meeting, the Committee will receive an overview of the VA health care system and electronic medical record, and will be asked to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of veterans.

Members of the public may make oral statements, limited to 5 minutes each, during the period reserved for public comments. They may also submit, at the time of the meeting, a 1–2 page summary of each statement for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Timothy O'Leary at *timothy.oleary@va.gov*.

Dated: May 9, 2007.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–2397 Filed 5–15–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will conduct a site visit on June 4–8, 2007, to the VA Palo Alto Health Care System (VAPAHCS), 3801 Miranda Avenue, Palo Alto, CA. Unless otherwise indicated, all briefings and updates will be held at the VA Palo Alto Health Care System. Site visit briefings, updates, and tours will be held from 8:30 a.m. until 4:30 p.m. each day and will be open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs, regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On June 4, the agenda topics for this meeting will include briefings and updates from key leadership of the VAPAHCS and Polytrauma Center, as well as a tour of the polytrauma area, Medical Surgical Intensive Care Unit (MSICU), laboratory, hospice, and pharmacy. On June 5, the Committee will receive briefings and updates on the VAPAHCS Women's Health Center, resident training, academic affairs/research, quality assurance, and surgical services.

On June 6, the Committee will receive briefings from key leadership of the Veterans Integrated Service Network 21 (Sierra Pacific Network), California State Department of Veterans Affairs, Oakland VA Regional Office, VA National Cemetery Service, Redwood City Vet Center, and VAPAHCS's community-based outpatient clinics (CBOSs).

On June 7, the Committee will visit the Menlo Park Division of the VAPAHCS, located at 795 Willow Road, Menlo Park, CA. The Committee will receive briefings and updates on the Women's Mental Health Program, inpatient Post-Traumatic Stress Disorder (PTSD), program, drug addiction programs, crisis intervention, OIF Help Center, chaplain services for women veterans, and the Health Resources Initiatives for Veterans Everywhere (THRIVE). The Committee will tour the resource center for women veterans, the domiciliary, and the substance abuse inpatient unit.

On June 8, the Committee will receive briefings and updates on veteran service organizations, nursing services, and inpatient acute psychiatry building plans for privacy issues. These presentations will be followed by an open forum and town hall meeting. The five day site visit will conclude with an exit briefing by VAPAHCS leadership.

Any member of the public wishing to attend or seeking additional information should contact Ms. Chanel Bankston-Carter at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Bankston-Carter may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *00W@mail.va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting or within 10 days after the meeting.

Dated: May 9, 2007.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–2396 Filed 5–15–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Annual Pay Ranges for Physicians and Dentists of the Veterans Health Administration (VHA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004'' (Pub. L. 108–445, dated December 3, 2004) the Department of Veterans Affairs (VA) is hereby giving notice of annual pay ranges for Veterans Health Administration (VHA) physicians and dentists as prescribed by the Secretary for Department-wide applicability. These annual pay ranges are intended to enhance the flexibility of the Department to recruit, develop, and retain the most highly qualified providers to serve our Nation's veterans and maintain a standard of excellence in the VA healthcare system.

EFFECTIVE DATES: Annual pay ranges are effective on July 8, 2007.

FOR FURTHER INFORMATION CONTACT: Donna R. Schroeder, Director, Compensation and Classification Service (055), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9803.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 7431(e)(1)(A), not less often than once every two years, the Secretary must prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid to VHA physicians and dentists. Further, 38 U.S.C. 7431(e)(1)(B) allows the Secretary to prescribe separate minimum and maximum amounts of pay for a specialty or assignment. In construction of the annual pay ranges, 38 U.S.C. 7431(c)(4)(A) requires the consultation of two or more national surveys of pay for physicians and dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians and dentists. Lastly, 38 U.S.C. 7431(e)(1)(C) states amounts prescribed under paragraph 7431(e) shall be published in the **Federal Register**, and shall not take effect until at least 60 days after date of publication.

Background

The ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004'' (Pub. L. 108–445) was signed by the President on December 3, 2004. The major provisions of the law established a new pay system for Veterans Health Administration (VHA) physicians and dentists consisting of base pay, market pay, and performance pay. While the base pay component is set by statute, market pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist at a facility. Further, performance pay is intended to recognize the achievement of specific goals and performance objectives prescribed annually. These three components create a system of pay that is driven by both market indicators and employee performance, while recognizing employee tenure in VHA.

Discussion

VA identified and utilized salary survey data sources which most closely represent VA comparability in the areas of practice setting, employment environment, and hospital/healthcare system. The Association of American Medical Colleges (AAMC), Hospital and Healthcare Compensation Service (HHCS), Sullivan, Cotter, and Associates (S&C), Physician Executive Management Center (PEMC), and the Survey of Dental Practice published by the American Dental Association (ADA) were collectively utilized as benchmarks from which to prescribe annual pay ranges for physicians and dentists across the scope of assignments/specialties within the Department. While aggregating the data, a preponderance of weight was given to those surveys which most directly resembled the environment of the Department.

In constructing annual pay ranges to accommodate the more than thirty specialties that currently exist in the VA system, VA continued the practice of grouping specialties into consolidated pay ranges. This allows VA to use multiple sources that yield a high number of physician salary data which helps to minimize disparities and aberrations that may surface from data involving smaller numbers of physicians and dentists for comparison and from sample change from year to year. Thus, by aggregating multiple survey sources into like groupings, greater confidence exists that the average compensation reported is truly representative. In addition, aggregation of data provides for a large enough sample size and provides pay ranges with maximum flexibility for pay setting for the more than 15,000 VHA physicians and dentists.

In developing the annual pay ranges, a few distinctive principles were factored into the compensation analysis of the data. The first principle is to ensure that both the minimum and maximum salary is at a level that accommodates special employment situations, from fellowships and medical research career development awards to Nobel Laureates, high-cost areas, and internationally renowned clinicians. The second principle, to attempt to establish a rate range of +/− 25 percent of the mean, is imperative to provide ranges large enough to accommodate career progression, geographic differences, sub-specialization, and special factors. This principle is also the standard recommended by World@Work for professional compensation ranges.

All clinical specialties for VHA physicians and dentists were reviewed against relevant private sector data. The specialties are grouped into five clinical pay ranges that reflect comparable complexity in salary, recruitment, and retention considerations. Two additional pay ranges apply to VHA Chiefs of Staff and physicians and dentists in executive level administrative assignments at the facility, network, or headquarters level.

PAY TABLE 1.—CLINICAL SPECIALTY

Tier level	Minimum	Maximum
Tier 1	$91,530	$175,000
Tier 2	110,000	200,000
Tier 3	120,000	215,000
Tier 4	130,000	225,000

PAY TABLE 1.—COVERED CLINICAL SPECIALTIES

Allergy and Immunology.
Endocrinology.
Geriatrics.
Infectious Diseases.
Internal Medicine/Primary Care/Family Practice/Admitting physician.
Neurology.
Preventive Medicine.
Psychiatry.
Rheumatology.
General Practice—Dentistry.
Endodontics.
Periodontics.
Prosthodontics.
Assignments that do not require a specific specialty.

PAY TABLE 2.—CLINICAL SPECIALTY

Tier level	Minimum	Maximum
Tier 1	$91,530	$200,000
Tier 2	115,000	215,000
Tier 3	130,000	225,000
Tier 4	140,000	235,000

PAY TABLE 2.—COVERED CLINICAL SPECIALTIES

Critical Care (board certified).
Emergency Medicine.
Gynecology.
Hematology—Oncology.
Nephrology.
Pathology.
Physical Medicine & Rehabilitation/Physiatry/ Spinal Cord Injury.
Pulmonary.

PAY TABLE 3.—CLINICAL SPECIALTY

TIER level	Minimum	Maximum
TIER 1	$91,530	$245,000
TIER 2	120,000	265,000
TIER 3	135,000	275,000
TIER 4	145,000	285,000

PAY TABLE 3.—COVERED CLINICAL SPECIALTIES

Cardiology (Non-invasive).
Dermatology.
Gastroenterology.
Nuclear Medicine.
Ophthalmology.
Oral Surgery.

PAY TABLE 3.—COVERED CLINICAL SPECIALTIES—Continued

Otolaryngology.

PAY TABLE 4.—CLINICAL SPECIALTY

TIER level	Minimum	Maximum
TIER 1	$91,530	$270,000
TIER 2	125,000	285,000
TIER 3	140,000	295,000
TIER 4	150,000	305,000

PAY TABLE 4.—COVERED CLINICAL SPECIALTIES

Anesthesiology.
Cardiology (Invasive).
General Surgery.
Plastic Surgery.
Radiology.
Therapeutic Radiology.
Urology.
Vascular Surgery.

PAY TABLE 5.—CHIEF OF STAFF

TIER level	Minimum	Maximum
TIER 1	$150,000	$260,000
TIER 2	145,000	240,000
TIER 3	140,000	220,000

PAY TABLE 6.—EXECUTIVE ASSIGNMENTS

TIER level	Minimum	Maximum
TIER 1	$110,000	$230,000

PAY TABLE 6.—EXECUTIVE ASSIGNMENTS—Continued

TIER level	Minimum	Maximum
TIER 2	110,000	250,000

PAY TABLE 6.—COVERED EXECUTIVE ASSIGNMENTS

Chief Officer.
Deputy Under Secretary for Health.
Facility Director.
Network Chief Medical Officer.
Network Director.
VA Central Office Physician.
VA Central Office Dentist.

PAY TABLE 7.—CLINICAL SPECIALTY

TIER level	Minimum	Maximum
TIER 1	$91,530	$325,000
TIER 2	140,000	350,000

PAY TABLE 7.—COVERED CLINICAL SPECIALTIES

Cardio-Thoracic Surgery.
Neurosurgery.
Radiology (Interventionalist).

Dated: May 10, 2007.

Gordon H. Mansfield,

Deputy Secretary of the Department of Veterans Affairs.

[FR Doc. 07–2401 Filed 5–15–07; 8:45 am]

BILLING CODE 8320–07–M

Federal Register

Wednesday,
May 16, 2007

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Jefferson County to Attainment of the 8-Hour Ozone Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0891; FRL–8312–7]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Jefferson County to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 31, 2006, the Ohio Environmental Protection Agency (Ohio EPA) submitted a request to redesignate Jefferson County, Ohio to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). In this submittal, Ohio EPA also requested EPA approval of an Ohio State Implementation Plan (SIP) revision for the ozone maintenance plan for Jefferson County. Additional supporting information was also submitted on October 3, 2006. Jefferson County is the Ohio portion of the Steubenville-Weirton, WV-OH 8-hour ozone nonattainment area. EPA is making a determination that this area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Quality-assured monitoring data for 2006 show that the area continues to attain the standard. EPA is also approving, as a SIP revision, the State's maintenance plan for Jefferson County. As a result, Ohio has now satisfied the criteria for redesignation of Jefferson County to attainment, and EPA is approving the requested redesignation. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2018 that are contained in the 11-year 8-hour ozone maintenance plan for Jefferson County.

DATES: This final rule is effective on June 15, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0891. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Jennifer Dunn, Environmental Engineer, at (312) 353–5899 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jennifer Dunn, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5899, *dunn.jennifer@epa.gov*.

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated the Steubenville-Weirton, WV-OH area, including Jefferson County, as a nonattainment area in a **Federal Register** notice published on April 30, 2004 (69 FR 23857). At the same time EPA classified the area as a subpart 1 8-hour ozone nonattainment area, based on air quality monitoring data from 2001 to 2003.

On July 31, 2006, and supplemented on October 3, 2006, Ohio submitted a request for redesignation of Jefferson County to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved in the entire Steubenville-Weirton, WV-OH area. An area meets the NAAQS when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration, analyzed for all locations in the area, is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The January 8, 2007, proposed rule (72 FR 711) provides a discussion of how the State of Ohio met these requirements for Jefferson County.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the January 8, 2007, proposed rule. EPA received no comments.

The United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, No. 04–1200, 472 F.3d 882 (DC Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on this and other proposed redesignation actions, 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. EPA provided a 15-day review and comment period on this supplemental proposed rulemaking. The public comment period closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments but does not believe any specific response to comments is necessary with respect to these comments.

III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that the Steubenville-Weirton, WV-OH nonattainment area has attained the 8-hour ozone standard. EPA is also approving Ohio's maintenance plan SIP revision for Jefferson County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan, in conjunction with the maintenance plan for the West Virginia portion of the area, is designed

to keep the area in attainment for ozone for the next 11 years, through 2018. Because Ohio has met these and other prerequisites for redesignation, EPA is approving the State's request to change the legal designation of the Jefferson County area from nonattainment to attainment for the 8-hour ozone NAAQS. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 volatile organic compounds (VOC) and oxides of nitrogen (NO_X) MVEBs for Jefferson County for transportation conformity purposes. The 2018 MVEBs for Jefferson County, Ohio are 1.37 tons per day for VOC and 1.67 tons per day for NO_X.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a federal standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 2, 2007.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) Approval—The 8-hour ozone maintenance plans for the following areas have been approved:

(1) Jefferson County, as submitted on July 31, 2006 and supplemented on October 3, 2006. The maintenance plan establishes 2018 motor vehicle emission budgets for Jefferson County of 1.37 tons per day for volatile organic compounds and 1.67 tons per day for oxides of nitrogen.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the entry for Steubenville-Weirton, OH-WV: Jefferson County in the table entitled ''Ohio Ozone (8-Hour Standard)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* *	*	*
Steubenville-Weirton, OH-WV: Jefferson County.	6/15/07	Attainment.		
* *	*	* *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. E7–9141 Filed 5–15–07; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Wednesday,
May 16, 2007

Part III

Environmental Protection Agency

40 CFR Parts 52 and 81

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Belmont County to Attainment of the 8-Hour Ozone Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0046; FRL–8312–8]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Belmont County to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 20, 2006, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request to redesignate Belmont County (the Ohio portion of the Wheeling, West Virginia-Ohio (WV-OH) bi-state ozone nonattainment area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). Additional information was also submitted on August 24, 2006 and December 4, 2006. In these submittals, Ohio EPA also requested EPA approval of an Ohio State Implementation Plan (SIP) revision containing a 12-year maintenance plan for the County. EPA is making a determination that the Wheeling (WV-OH) nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained. Quality assured monitoring data for 2006 shows that the area continues to attain the standard. EPA is approving, as a SIP revision, the State's maintenance plan for Belmont County. As a result, Ohio has satisfied the criteria for redesignation of Belmont County to attainment and EPA is approving the requested redesignation. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2018 that are contained in 8-hour ozone maintenance plan.

DATES: This final rule is effective on June 15, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0046. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steve Marquardt, Environmental Engineer, at (312) 353–3214 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3214, *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated Belmont County as part of the Wheeling WV–OH nonattainment area in a **Federal Register** notice published on April 30, 2004, (69 FR 23857). At the same time EPA classified the area as a subpart 1 8-hour ozone nonattainment area, based on air quality monitoring data from 2001–2003.

On June 20, 2006, Ohio EPA submitted a request for redesignation of Belmont County, Ohio to attainment for the 8-hour ozone standard. Additional supporting information was also submitted on August 24, 2006 and December 4, 2006. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved. The data satisfy the CAA requirements for attainment when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the areas have attained the standard and the areas meet the other CAA redesignation requirements in section 107(d)(3)(E). The December 27, 2006, proposed rule (71 FR 77666) provides a discussion of how the State of Ohio met these requirements for the area.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the December 27, 2006, proposed rule. EPA received no comments.

The United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, No. 04–1200, 472 F.3d 882 (D.C. Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on these and other proposed redesignation actions. 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. The public comment period on this supplemental proposed rulemaking closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments and does not find that any specific response is necessary with respect to these supportive comments. Accordingly, EPA is proceeding with redesignation of these areas as proposed.

III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that the Wheeling (WV-OH) nonattainment area has attained the 8-hour ozone standard. EPA is approving Ohio's maintenance plan SIP revision for Belmont County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed, in conjunction with the maintenance plan developed by West Virginia, to keep the Wheeling WV–OH area in attainment for ozone through 2018. Because Ohio has met these and

other prerequisites for redesignation, EPA is approving the State's request to change the legal designation of Belmont County from nonattainment to attainment for the 8-hour ozone NAAQS. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 VOC and NO_X MVEBs for transportation conformity purposes. The 2018 MVEBs for Belmont County, Ohio are 1.52 tons per day for volatile organic compounds (VOC) and 1.91 tons per day for oxides of nitrogen (NO_X). West Virginia develops MVEBs for its portion of the area.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 2, 2007.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff)(2) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) * * *

(2) Belmont County, as submitted on June 20, 2006, and supplemented on August 24, 2006, and December 4, 2006. The maintenance plan establishes 2018 motor vehicle emission budgets for Belmont County of 1.52 tons per day for volatile organic compounds and 1.91 tons per day for oxides of nitrogen.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the entry for Wheeling, WV-OH: Belmont County in the table entitled ''Ohio Ozone (8-Hour Standard)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Wheeling, WV–OH: Belmont County	6/15/2007	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. E7–9149 Filed 5–15–07; 8:45 am]
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Federal Register

Wednesday,
May 16, 2007

Part IV

Environmental Protection Agency

40 CFR Parts 52 and 81

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Allen and Stark Counties to Attainment of the 8-Hour Ozone Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0046; FRL–8312–9]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Allen and Stark Counties to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 20, 2006, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request to redesignate the Allen County, Ohio (Lima) and Stark County (Canton) nonattainment areas to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). Additional information was also submitted on August 24, 2006 and December 4, 2006. In these submittals, Ohio EPA also requested EPA approval of an Ohio State Implementation Plan (SIP) revision containing a 12-year maintenance plan for each County. EPA is making a determination that the Allen County, Ohio and Stark County, Ohio ozone nonattainment areas have attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas. Quality assured monitoring data for 2006 shows that the areas continue to attain the standard. EPA is approving, as a SIP revision, the State's maintenance plan for the areas. As a result, Ohio has satisfied the criteria for redesignation of Allen County (Lima) and Stark County (Canton) to attainment and EPA is approving the requested redesignation. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2018 that are contained in 8-hour ozone maintenance plan for each County.

DATES: This final rule is effective on June 15, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0046. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steve Marquardt, Environmental Engineer, at (312) 353–3214 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3214, *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated Allen County and Stark County as nonattainment areas in a **Federal Register** notice published on April 30, 2004, (69 FR 23857). At the same time EPA classified each county as a subpart 1 8-hour ozone nonattainment area, based on air quality monitoring data from 2001–2003.

On June 20, 2006, Ohio submitted a request for redesignation of Allen County, Ohio and Stark County, Ohio to attainment for the 8-hour ozone standard. Additional supporting information was also submitted on August 24, 2006, and December 4, 2006. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved. The data satisfy the CAA requirements for attainment when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the areas have attained the standard and the areas meet the other CAA redesignation requirements in section 107(d)(3)(E). The December 27, 2006, proposed rule (71 FR 77678) provides a discussion of how the State of Ohio met these requirements for both areas.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the December 27, 2006, proposed rule. EPA received no comments.

The United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, No. 04–1200., 472 F.3d 882 (D.C. Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on these and other proposed redesignation actions. 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. The public comment period on this supplemental proposed rulemaking closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments and does not find that any specific response is necessary with respect to these supportive comments. Accordingly, EPA is proceeding with redesignation of these areas as proposed.

III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that the Allen County, Ohio and Stark County, Ohio nonattainment areas have attained the 8-hour ozone standard. EPA is approving Ohio's maintenance plan SIP revision for each county (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep each county in attainment for ozone through 2018. Because Ohio has met

these and other prerequisites for redesignation, EPA is approving the State's request to change the legal designation of both counties from nonattainment to attainment for the 8-hour ozone NAAQS. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 VOC and NO_X MVEBs for each county for transportation conformity purposes. The 2018 motor vehicle emission budgets for Allen County, Ohio are 2.89 tons per day for volatile organic compounds (VOC) and 3.47 tons per day for oxides of nitrogen (NO_X). For Stark County, Ohio the budgets are 5.37 tons per day for VOC and 7.08 tons per day for NO_X.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 2, 2007.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff)(3)to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) * * *

(3) Allen County and Stark County, as submitted on June 20, 2006, and supplemented on August 24, 2006, and December 4, 2006. The maintenance plan establishes 2018 motor vehicle emission budgets for Allen County of 2.89 tons per day for volatile organic compounds (VOC) and 3.47 tons per day for oxides of nitrogen (NO_X). For Stark County the budgets are 5.37 tons per day for VOC and 7.08 tons per day for NO_X.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the entries for Canton-Massillon, Ohio: Stark County and Lima, Ohio: Allen County in the table entitled ''Ohio Ozone (8–Hour Standard)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* *	*	*
Canton-Massillon, OH: Stark County	6/15/07	Attainment.		
* *	*	* *	*	*
Lima, OH: Allen County	6/15/07	Attainment.		
* *	*	* *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

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Wednesday,
May 16, 2007

Part V

Environmental Protection Agency

40 CFR Parts 52 and 81

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Washington County to Attainment of the 8-Hour Ozone Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 81

[EPA–R05–OAR–2006–0892; FRL–8313–1]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Washington County to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 22, 2006, the Ohio Environmental Protection Agency (Ohio EPA) submitted a request to redesignate Washington County (the Ohio Portion of the Parkersburg-Marietta, West Virginia-Ohio (WV-OH) bi-state ozone nonattainment area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). Additional information was submitted on November 17, 2006. In these submittals, Ohio EPA also requested EPA approval of an Ohio State Implementation Plan (SIP) revision containing a 12-year maintenance plan for the County. EPA is making a determination that the Parkersburg-Marietta (WV-OH) nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained. Quality assured monitoring data for 2006 shows that the area continues to attain the standard. EPA is approving, as a SIP revision, the State's maintenance plan for Washington County. As a result, Ohio has satisfied the criteria for redesignation of Washington County to attainment and EPA is approving the requested redesignation. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2018 that are contained in the 8-hour ozone maintenance plan.

DATES: This final rule is effective on June 15, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0892. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steve Marquardt, Environmental Engineer, at (312) 353–3214 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3214, *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated Washington County, Ohio as part of the Parkersburg-Marietta WV–OH nonattainment area in a **Federal Register** notice published on April 30, 2004, (69 FR 23857). At the same time EPA classified the area as a subpart 1 8-hour ozone nonattainment area, based on air quality monitoring data from 2001–2003.

On September 22, 2006, Ohio EPA submitted a request for redesignation of Washington County, Ohio to attainment for the 8-hour ozone standard. Additional supporting information was also submitted on November 17, 2006. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved. The data satisfy the CAA requirements for attainment when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the areas have attained the standard and the areas meet the other CAA redesignation requirements in section 107(d)(3)(E). The January 17, 2007, proposed rule (72 FR 1956) provides a discussion of how the State of Ohio met these requirements for the area.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the January 17, 2007, proposed rule. EPA received no comments.

The United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, No. 04–1200, 472 F.3d 882 (D.C. Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on these and other proposed redesignation actions. 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. The public comment period on this supplemental proposed rulemaking closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments and does not find that any specific response is necessary with respect to these supportive comments. Accordingly, EPA is proceeding with redesignation of these areas as proposed.

III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that the Parkersburg-Marietta, WV-OH nonattainment area has attained the 8-hour ozone standard. EPA is approving Ohio's maintenance plan SIP revision for Washington County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed, in conjunction with the maintenance plan developed by West Virginia, to keep the

Parkersburg-Marietta WV–OH area in attainment for ozone through 2018. Because Ohio has met these and other prerequisites for redesignation, EPA is approving the State's request to change the legal designation of Washington County from nonattainment to attainment for the 8-hour ozone NAAQS. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 volatile organic compound (VOC) and oxides of nitrogen (NO_X) MVEBs for transportation conformity purposes. The 2018 MVEBs for Washington County, Ohio are 1.67 tons per day for VOC and 1.76 tons per day for NO_X. West Virginia develops MVEBs for its portion of the area.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves as state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Untied States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 2, 2006.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff) (4) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) * * *

(4) Washington County, as submitted on September 22, 2006, and supplemented on November 17, 2006. The maintenance plan establishes 2018 motor vehicle emission budgets for Washington county of 1.67 tons per day for volatile organic compounds and 1.76 tons per day for oxides of nitrogen.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401*et seq.*

■ 2. Section 81.336 is amended by revising the entry for Parkersburg-Marietta, WV-OH: Washington county in the table entitled ''Ohio Ozone (8-Hour Standard)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO OZONE (8-HOUR STANDARD)

Designated area			Designation [a]		Classification	
			Date [1]	Type	Date [1]	Type
*	*	*	*	*	*	*
Parkersburg-Marietta, County.	WV-OH:	Washington	6/15/07	Attainment.		
*	*	*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 07–2335 Filed 5–15–07; 8:45 am]

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Federal Register

Wednesday,
May 16, 2007

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 149, 160, and 161

Trichinae Certification Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 149, 160, and 161

[Docket No. APHIS–2006–0089]

RIN 0579–AB92

Trichinae Certification Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a voluntary Trichinae Certification Program for U.S. pork that has been produced under disease-prevention conditions. Under the proposed program, we would certify pork production sites that follow prescribed good production practices that reduce, eliminate, or avoid the risk of exposure of animals to the zoonotic parasite *Trichinella spiralis*, a disease of swine. Such a program should enhance the ability of producers to export pork and pork products to overseas markets. This proposed program, which would be funded by program fees, has been developed as a cooperative effort by the U.S. Department of Agriculture, the National Pork Board, and the pork processing industry. If adopted, this program would include those producers who choose to participate in the program, as well as slaughter facilities and other persons that handle or process swine from pork production sites that have been certified under the program.

DATES: We will consider all comments that we receive on or before July 16, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0089 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery*: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0089, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0089.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Dave Pyburn, National Trichinae Coordinator, VS, APHIS, 210 Walnut Street Room 891, Des Moines, IA 50309; (515) 284–4122.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (7 U.S.C. 8301–8317), the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals). Such operations can include animals at a slaughterhouse, stockyard, or other point of concentration. The Administrator may also cooperate with State authorities, Indian tribe authorities, or other persons in the administration of regulations for the improvement of livestock and livestock products. For example, APHIS administers regulations in subchapter G of chapter I, title 9, of the Code of Federal Regulations (CFR) that address poultry improvement through the National Poultry Improvement Plan (NPIP). The NPIP is a cooperative Federal-State-industry mechanism consisting of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. As a result, customers can buy poultry or poultry products from flocks that have been certified free of certain diseases or produced under disease-prevention conditions.

APHIS' regulations in 9 CFR parts 160 through 162 govern the accreditation of veterinarians. Accredited veterinarians are approved by the APHIS Administrator to perform certain regulatory tasks to control and prevent the spread of animal diseases throughout the United States.

Under the Federal Meat Inspection Act (FMIA), as amended (21 U.S.C. 601 *et seq.*), and the Poultry Products Inspection Act (PPIA), as amended (21 U.S.C. 451 *et seq.*), the USDA's Food Safety and Inspection Service (FSIS) inspects meat and poultry slaughtered or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry. In addition to mandatory inspection, FSIS, under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. FSIS regulations covering inspection and other related activities are found at 9 CFR chapter III.

Under the Agricultural Marketing Act of 1946, USDA's Agricultural Marketing Service (AMS) provides analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing or quality standards. Pursuant to this authority, AMS develops and maintains laboratory certification and approval programs as needed by the agricultural industry, to support domestic and international marketing of U.S. products.

Trichinae In Swine

Trichinella spiralis is a parasitic nematode (roundworm) that is found in many warm-blooded carnivores and omnivores, including swine. Trichinae is a generic term that refers to *Trichinella spiralis*. Trichinae has a direct life cycle, which means it completes all stages of development in one host. Transmission from one host to another host can only occur by ingestion of muscle tissue that is infected with the encysted larval stages of the parasite. When ingested, muscle larvae are freed from the cyst by digestion in the stomach and then enter tissues of the small intestine, where they undergo development to the adult stage. Male and female adult parasites mate, and the females produce newborn larvae that leave the intestine and migrate through the host circulatory system to striated muscle tissue. There, the larvae penetrate a muscle cell, modify it to become a unique cyst, and mature to become infective for another host. The total time required for this to occur is from 17 to 21 days. Adult males die after mating, but adult females continue to produce larvae in the host for several weeks before they die and are expelled. Once adult worms are expelled and larvae reach and encyst in musculature,

no further contamination can occur. Animals that are infected with trichinae are at least partially resistant to a subsequent infection due to a strong and persistent immunity.

Trichinae may be passed on to humans who consume undercooked meat infected with the encysted parasite. Humans who are infected with the parasite generally experience flu-like symptoms, such as fever.

Trichinae has a longstanding association with swine and pork products, not only in the United States but around the world. The concept that many people have about the need to cook pork thoroughly is based on the risk of becoming infected with this parasite. The historical problem of trichinae infection in swine is the basis for strict Federal regulations relating to the methods used to prepare ready-to-eat pork products.

Despite the historical problems of trichinae and its association with the pork industry, changes have occurred in the last 50 years that have caused a major decline in the prevalence of this parasite in swine raised in the United States.

Historically, trichinae infection in swine was associated with feeding them raw meat waste products. Major inroads with respect to the reduced incidence of trichinae infection occurred with the advent of meat waste cooking laws in response to vesicular exanthema (1953–1954) and the hog cholera eradication program (1962). Of equal importance has been the movement to high levels of biosecurity and hygiene under which most U.S. swine are now raised as producers increasingly use intensive management systems in raising swine.

Despite the fact that trichinae is rare in today's U.S. swine industry, pork still suffers from its historical association with the parasite. Today, the trichinae issue is a question of perception versus reality. Human cases of trichinellosis reported to the Centers for Disease Control and Prevention declined from about 500 per year in the 1940's to fewer than 50 per year over the last decade. Further, many of these cases resulted from non-pork sources such as bear and other game meats. However, the dramatic declines in the prevalence of trichinae in U.S. swine and the extremely low number of cases in humans in the United States remain largely unrecognized by consumers and our trading partners.

Today, exposure of domestic swine to trichinae is limited to just a few risk factors that include: Consumption by swine of uncooked meat waste products contaminated with trichinae, consumption of rodents or other wildlife infected with trichinae, and cannibalism among swine within an infected herd. Generally, the way that swine become infected can be determined by a simple evaluation of farm management practices. Since it is illegal to feed raw meat waste products to swine, this particular source of infection should never be an issue. However, feeding of any raw or undercooked meat scraps, including table waste, does pose a risk. Of much greater significance is the exposure of swine to rodents and wildlife infected with trichinae. Rodents, and rats in particular, serve as a reservoir host for trichinae infection. Rodents can pick up infection from landfills, carrion, or even dead swine. When rat populations are in close proximity to swine, it is possible that either live or dead rats will be caught and eaten by the swine. If the rat happens to be infected, then trichinae infection will occur. The same type of risk holds true for other small mammals. Swine that have free range to browse outdoors occasionally encounter carcasses that they may consume. Small mammals that have been shown to have higher prevalence rates for trichinae include raccoons, skunks, and opossums. The risk of exposure of swine to trichinae at the production site can be greatly reduced, if not eliminated, by taking the following steps:

- Do not feed uncooked waste products, table scraps, or animal carcasses to swine. This is particularly important in the case of carcasses from hunted or trapped wildlife.
- Eliminate or minimize the exposure of swine to live wildlife. Create barriers that are effective in separating swine from skunks, raccoons, and other small mammals.
- Implement and maintain an effective rodent control program at the pork production site. Biosecurity, maintaining perimeters, baiting, and trapping are all part of rodent control.
- Maintain good hygiene at the pork production site. Remove dead swine as soon as they are found. Keep barns free from clutter and store feed securely.

Trichinae Control

Despite the relatively low prevalence of trichinae in swine in many developed countries, considerable energy goes into preventing human exposure to this parasite. There are a variety of ways in which trichinae control is approached. A number of countries require slaughter testing of each carcass. In fact, for pork exported to the European Union (EU), packers in the United States test carcasses using the same methods employed by European meat inspectors. While the need for such measures may no longer seem as immediate, given that trichinae is almost nonexistent in U.S.-produced pork, it is apparent that some organized approach to demonstrating product safety is still needed for overseas markets. The following discussion summarizes the potential methods that are currently used for trichinae control.

Slaughter Testing

Many countries require slaughter testing of each carcass. Such testing is largely a continuation of measures implemented when trichinae was a serious problem. In many countries, slaughter inspection programs are required.

Approved slaughter testing methods for trichinae in swine include direct methods for visualization of parasites. Since it is not possible to see trichinae cysts within meat tissue by macroscopic examination, it is necessary to perform one of several laboratory tests. The oldest method, and one still frequently used, is called the compression method. Small pieces of pork collected from the pillars (crus muscle or hanging tenderloin) of the diaphragm are compressed between two thick glass slides (a compressorium) and examined microscopically for the presence of *Trichinella spiralis* larvae.

An improvement over the compression method, and a method that is now widely used in Europe, is the pooled sample digestion method. Samples of tissue collected from sites where parasites concentrate, such as the diaphragm, masseters, or tongue, are subjected to digestion in acidified pepsin. Larvae, which are freed from their muscle cell cysts by this process, are recovered by a series of settling steps, then visualized and counted under a microscope. Requirements for performing the digestion test are found in the Directives of the European Economic Community, in the FSIS regulations in 9 CFR 318.10(e), and in various other publications.

Another method of testing swine for trichinae infection is an indirect method that looks for antibodies to the parasites in swine sera, plasma, whole blood, tissue fluid, or meat juice. The enzyme-linked immunosorbent assay (ELISA) method has been used extensively for testing in both pre- and post-slaughter applications and is an extremely useful tool for determining or monitoring trichinae infection in herds.

Where fresh pork is not routinely tested for trichinae, as is the case in the United States, alternative measures are used to prevent exposure of humans to potentially contaminated product. These include processing methods such

as cooking, freezing, irradiation, and curing along with recommendations to the consumer concerning the need for thorough cooking.

In lieu of carcass testing or treatment to show that swine or pork product is not infected or contaminated, there are still other means to ensure the safety of the product. These include herd testing to prove that trichinae infection is not present in a particular geographical region (*i.e.*, certification by region) or raising swine under prescribed conditions that reduce, eliminate, or avoid the risk of exposure of swine to trichinae (*i.e.*, certification of individual pork production sites). In the former case, considerable testing on a regular basis is required to document the absence of infection. In the latter case, documentation of good production practices is necessary to show that swine have not had an opportunity to become exposed to or infected with trichinae.

Certification By Region

The basis for a regional approach to certification is found in the Office International des Epizooties (OIE) International Animal Health Code. (Recommendations relating to Trichinellosis (*Trichinella spiralis*) appear in Part 2, Article 2.2.9.3 of the International Animal Health Code, 2001.) The OIE Code provides that domestic swine in a country, or part of the territory of a country, may be considered free from trichinae based on the following factors: Trichinellosis in humans and animals must be reported; there is an effective disease reporting system in place that has proven to be capable of capturing the occurrence of cases; and it has been found that trichinae infection does not exist in the domestic swine population based on regular testing of a statistically significant sample of the population, or trichinellosis has not been reported in 5 years and a surveillance program shows that the disease is absent from wild animal populations.

As noted previously, the United States has an extremely low incidence of trichinae infection in swine. Although human trichinellosis is a reportable disease, the United States has no history of regular testing to determine trichinae infection in swine, nor do most States require the reporting of trichinae infection in swine when detected. Because a number of countries, such as those in the EU, require some form of testing for trichinae, implementing a trichinae control program in the United States would remove certain obstacles faced by exporters of U.S.-produced pork. One way to accomplish this goal within a reasonable timeframe would be to certify that herds were produced under the requirements of the Trichinae Certification Program and based on the use of good production practices that reduce, eliminate, or avoid the risk of exposure of swine to trichinae infection.

Recent research efforts and pilot studies involving APHIS, FSIS, USDA's Agricultural Marketing Service (AMS), Agricultural Research Service (ARS), and Cooperative State Research, Education, and Extension Service (CSREES), the National Pork Board, and other private industry and packer groups have led to the development of a program for certification of swine from pork production sites. Certification of swine as produced under the requirements of the Trichinae Certification Program is contingent on pork production sites following certain good production practices that reduce, eliminate, or avoid risk factors for the transmission of trichinae to swine, as well as systematic monitoring and testing of the product at the slaughter facility. The concept of risk management for control of *Trichinella spiralis* in the domestic swine population is endorsed by the U.S. Animal Health Association, the National Institute for Animal Agriculture, and the American Association of Swine Veterinarians.

A program for the certification of pork production sites that follow good production practices incorporates many of the principles of a Hazard Analysis and Critical Control Points or ''HACCP'' system. The specific hazard is the risk of exposure of swine to *Trichinella spiralis*. The critical control points in addressing this hazard, which are based on a number of studies on the epidemiology of trichinellosis and its transmission to domestic swine, focus on addressing those practices that potentially allow swine to ingest raw or undercooked meat waste products or rodents or animal carcasses that contain trichinae. The certification process in this type of program encompasses the following basic steps:

- Accredited veterinarians trained in good production practices relative to exposure to trichinae work with producers to ensure that trichinae risk factors are reduced, eliminated, or avoided at pork production sites;
- The site audit performed by trained USDA-accredited veterinarians serves as a method to document that risks of infection are eliminated or satisfactorily controlled. Audits need to be done periodically to ensure that good production practices relative to trichinae control remain in place;
- On a regular basis, a statistically valid sample of the total number of swine from certified production sites is tested at the slaughter facility laboratory or some other onsite or offsite laboratory using licensed or accepted testing methods to verify the absence of trichinae infection; and
- QVMOs perform random ''spot audits'' of certified production sites to ensure the overall integrity and consistency of the program.

The regular site audit takes into account those management practices that affect the risk of exposure of swine to trichinae, such as feed integrity (*i.e.*, source and storage), building construction and condition as it pertains to biosecurity, integrity of rodent control programs, and general management and hygiene factors as they pertain to rodent control, swine cannibalism, and other issues. As a part of the process of raising swine under good production practices, the producer needs to maintain certain records that document its adherence to good production practices, with those records being verified in the site audit. The producer also is responsible for adhering to good production practices between site audits.

A pilot program for the certification of pork production sites as being produced under the requirements of the Trichinae Certification Program that involved the above-mentioned agencies of USDA, as well as private industry, was conducted in Iowa, Minnesota, and South Dakota in 1997 and 1998. The purpose of the pilot program was to evaluate a process-verification system for the production of pork. An on-farm audit, consisting of 55 questions, was developed to identify those risk factors that could expose swine to *Trichinella spiralis*. The audit was administered by USDA-trained accredited veterinary practitioners at 198 pork production sites in the 3-State area. All swine raised on sites where audits were conducted were slaughtered at a single packing plant and a sample from each carcass was tested by the pooled sample digestion and ELISA methods. Few production sites met all criteria established within the audit for good production practices similar to those proposed in this document. Most of the deficiencies related to the absence of a regular rodent control program around and in swine production facilities. However, it was determined that more than 85 percent of these sites could meet good production practice criteria with minor improvements in site management. From a total of 221,123 carcass samples tested from farms audited during a 6-month period, no trichinae-positive carcasses were

detected by digestion or ELISA methods. Based on the outcome of this pilot program, an improved, more succinct audit was developed with objective measures for those good production practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*. This revised version of the site audit is currently being used in a second pilot program involving pork production sites located in Colorado, Illinois, Iowa, Minnesota, Missouri, Nebraska, Oklahoma, and South Dakota that are supplying swine to a slaughter facility in Iowa.

This second pilot program began in December of 2000. Pork product sites were selected based on their willingness to participate in the program. As of December 2004, there were approximately 125 sites participating in the program. Program sites have completed one or more official pilot audits conducted by qualified accredited veterinarians that indicate the site is following certain good production practices designed to reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*. The slaughter facility in Iowa has conducted verification testing on swine carcasses from a statistically valid sample of the participating sites that have attained ''certified'' status. Close to 100 accredited veterinarians have also been trained as site auditors during this period.

The primary purpose of this second pilot program is to verify the adequacy of the selected good production practices in minimizing, reducing, or eliminating the risk of exposure of swine to *Trichinae spiralis*, as well as to confirm that the site audit and slaughter plant sample testing protocols provide a dependable means of verifying that good production practices are being followed. This second pilot program will continue until rulemaking establishes the Trichinae Certification Program.

Collaboration with AMS and FSIS

As previously stated, APHIS has collaborated with FSIS and AMS, among other entities, in developing a program for certification of swine from pork production sites. This collaboration included the research efforts of AMS as well as their continuing role in training laboratory technicians who work in slaughter facilities on how to conduct trichinae ELISA tests. FSIS has supported the trichinae program through its research efforts at the beginning of the pilot program and its direct participation in the program at federally inspected slaughter facilities. Moreover, in a proposed rule published in the **Federal Register** on February 27, 2001 (66 FR 12590–12635), FSIS, in proposing to remove prescriptive trichinae treatment requirements in favor of performance standards, pointed to the program as one means by which establishments that produce pork products can ascertain whether their suppliers have taken measures to prevent trichinae infection of their herds. In that document, FSIS also discussed its role in verifying that processors properly check status of pigs, testing samples as required, and maintaining adequate animal identification and records under the program. Both AMS and FSIS have been important and willing partners in this pilot program, and we expect this collaboration to continue.

As a result of the cooperative research efforts and pilot programs just referenced, we are proposing to establish regulations for a voluntary Trichinae Certification Program to appear as a new part 149 in 9 CFR subchapter G of the regulations. The current title of Subchapter G, ''Poultry Improvement'', would be changed to ''Livestock Improvement'' to reflect that the subchapter's regulatory coverage would now encompass animals other than poultry. The proposed Trichinae Certification Program would provide for the certification of pork production sites that follow certain prescribed management practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*. In addition to establishing a new part 149, we also would make certain changes to existing regulations in 9 CFR parts 160 and 161 covering the accreditation of veterinarians that are needed for this Trichinae Certification Program. The full text of the proposed regulations appears in the rule portion of this document. Our discussion of the proposed provisions follows.

Purpose and Scope

Proposed § 149.0 would provide that the Trichinae Certification Program described in part 149 is intended to enhance the ability of swine producers, as well as slaughter facilities and other persons that handle or process swine from pork production sites that have been certified under the program, to export fresh pork and pork products to overseas markets. We would include this statement in the regulations because, although we recognize that producers may wish to participate in the program for domestic marketing purposes, such uses would be outside the scope of APHIS' authority. Any domestic marketing uses of the program, such as the labeling of products, would have to be conducted in accordance with the regulations of FSIS and AMS.

Definitions

Proposed § 149.1 would contain definitions for the terms used in part 149.

We would define an *accredited veterinarian* as a veterinarian approved by the APHIS Administrator in accordance with 9 CFR part 161 to perform functions specified in 9 CFR, chapter I, subchapters B, C, D, and G.

The term *Agricultural Marketing Service* or *AMS* would refer to the Agricultural Marketing Service of the United States Department of Agriculture, while the *AMS Administrator* would refer to the Administrator, Agricultural Marketing Service, or any person authorized to act for the AMS Administrator. An *AMS representative* would be defined as any individual employed by or acting as an agent on behalf of the Agricultural Marketing Service who is authorized by the AMS Administrator to perform the services required by proposed part 149.

The term *Animal and Plant Health Inspection Service* or *APHIS* would refer to the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

An *animal disposal plan* would be defined as a written document that describes methods for the removal and disposal of dead swine or swine remains from a pork production site, while an *animal movement record* would be defined as a written record of the movement of swine into or from a pork production site.

The term *APHIS Administrator* refers to the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the APHIS Administrator, while an *APHIS representative* would refer to any individual employed by or acting as an agent on behalf of the Animal and Plant Health Inspection Service who is authorized by the APHIS Administrator to perform the services required by proposed part 149.

We would define an *approved laboratory* as a non-Federal laboratory approved by the Agricultural Marketing Service and recognized by the APHIS Administrator or FSIS Administrator for performing validated tests to determine the presence of trichinae infection in reference to the Trichinae Certification Program.

The term *audit* would be defined as an inspection process, as provided in proposed part 149, that generates a written record documenting a pork production site's adherence to the required good production practices.

There would be two types of audits, a site audit and a spot audit, both of which are defined below. An *auditor* would be defined as a qualified accredited veterinarian (QAV) or a qualified veterinary medical officer (QVMO) who is trained and authorized by APHIS to perform auditing activities under the Trichinae Certification Program.

The term *certification* or *certified* would refer to the designation given by the APHIS Administrator to a pork production site that has been determined to be in compliance with the specific good production practices and other program requirements of the Trichinae Certification Program as provided in part 149.

The term *certified pork* would refer to pork or pork products originating from certified swine from a certified production site with identity of such animals or carcasses maintained throughout receiving, handling, and processing.[1]

A *certified production site* would be defined as a pork production site that has attained a program status of Stage II or higher based on adherence to good production practices and other program requirements as provided in proposed part 149.

The term *certified swine* would refer to swine produced under the Trichinae Certification Program on a certified production site.

The term *decertification* or *decertified* would be defined as the removal of the certified status of a production site by the APHIS Administrator when it has been determined that the criteria of the Trichinae Certification Program are not being met or maintained.

Enzyme-linked immunosorbent assay or *ELISA* would refer to a method of testing swine for the presence of trichinae infection by looking for antibodies to *Trichinella spiralis* in the sera, plasma, whole blood, tissue fluid, or meat juice of swine.

The term *EPA* would refer to the United States Environmental Protection Agency.

A *feed mill quality assurance affidavit* would be defined as a written statement signed by the feed mill representative and the producer that documents the quality and safety of feed or feed ingredients delivered from the feed mill to the pork production site.

Food Safety and Inspection Service or *FSIS* would refer to the Food Safety and Inspection Service of the United States Department of Agriculture, while the *FSIS Administrator* would refer to the Administrator, Food Safety and Inspection Service, or any person authorized to act for the Administrator. An *FSIS program employee* would be defined as any individual employed by or acting as an agent on behalf of the Food Safety and Inspection Service who is authorized by the FSIS Administrator to perform the services required under proposed part 149.

The term *good manufacturing practices* would be defined as feed manufacturing practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis,* while the term *good production practices* would refer to pork production management practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*.

The term *harborage* would be defined as any object, debris, clutter, or area that could serve as shelter or refuge for rodents or wildlife.

We would define a *laboratory approval audit* as an audit performed by AMS representatives to determine if a laboratory meets minimum requirements for approval, as established by AMS, for performing validated tests under proposed part 149.

We would define *National Trichinae Certified Herd* as all swine raised on certified production sites in the United States.

The term *person* would be defined as any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

A *pest control operator* refers to a person trained and State-licensed in the control of pests and vermin (particularly rodents).

Pooled sample digestion method or *digestion method* would refer to a method of testing swine for trichinae infection by identifying the presence of *Trichinella spiralis* from a sample of the animal's muscle tissue.

We would define a *pork production site* or *site* as a geographically definable area that includes pork production facilities and ancillary structures under common ownership or management systems and the surrounding space within a 100-foot perimeter of the swine housing and feeding areas.

The term *positive test result* would mean the outcome of a validated test indicating the presence of *Trichinella spiralis*.

The term *process-verification testing* would refer to the testing of a statistically valid sample of swine belonging to the National Trichinae Certified Herd at the time of slaughter using a validated test to verify that the adherence to good manufacturing practices and good production practices is resulting in the absence of *Trichinella spiralis* infection in swine from that herd.

We would define a *producer* as an individual or entity that owns or controls the production or management of swine.

A *qualified accredited veterinarian* or *QAV* would refer to an accredited veterinarian who has been granted an accreditation specialization by the APHIS Administrator pursuant to 9 CFR 161.5 based on completion of an APHIS-approved orientation or training program in good production practices in swine management, and who is authorized by the APHIS Administrator to perform site audits and other specified program services required in proposed part 149. A *qualified veterinary medical officer* or *QVMO* would refer to a VMO of the State or Federal Government who is trained in good production practices and is authorized by the APHIS Administrator to perform site audits, spot audits, and other specified program services required in proposed part 149.

The term *rodent control logbook* would be defined as a written record that documents a rodent control program for a pork production site.

We would define a *site audit* as an audit, performed by a QAV or a QVMO, to determine the trichinae risk factor status of a pork production site based on the site's adherence to all of the required good production practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*.

The term *slaughter facility* would be defined as a slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act that receives certified swine under the Trichinae Certification Program.

We would define the term *slaughter facility representative* as any individual employed by, or acting as an agent on behalf of, a slaughter facility who is authorized by the slaughter facility to perform specified program services required in proposed part 149.

A *spot audit* would refer to an audit of a certified pork production site performed by a QVMO to ensure program integrity and consistency.

Pork production sites that are in the Trichinae Certification Program would be assigned a particular program status as either a Stage I enrolled site, a Stage II certified site, or a Stage III certified site. The term *Stage I enrolled* would refer to the preliminary program status

[1] The labeling of all certified pork or pork products leaving a slaughter or processing facility must comply with 9 CFR 317.4 and all other applicable FSIS labeling regulations.

of a pork production site attained when the APHIS Administrator approves the outcome of an initial site audit. We would define the term *Stage II certified* as that program status attained upon APHIS approval of a site audit of a Stage I enrolled site, while the term *Stage III certified* would refer to program status attained upon APHIS approval of a site audit of a Stage II certified site and maintained upon APHIS approval of subsequent site audits for renewal of Stage III certified status.

The term *sterile zone* would be defined as an open area immediately adjacent to and surrounding those building(s) used to house and feed swine that serves as both a buffer and detection zone for rodent and wildlife activity.

The term *temporary withdrawal* would be defined as the voluntary withdrawal of a certified production site from the Trichinae Certification Program at the request of the producer for a period not to exceed 180 days.

Trichinae would be defined as a generic term that refers to *Trichinella spiralis*.

We would define *Trichinae Certification Program* or *program* as a voluntary pre-harvest pork safety program in which APHIS certifies pork production sites that follow all of the required good production practices that reduce, eliminate, or avoid the risk of exposure of swine from their sites to *Trichinella spiralis*.

The *Trichinae Identification Number* or *TIN* would be a number assigned to a pork production site by the APHIS Administrator.

We would define the term *Trichinella spiralis* as a parasitic nematode (roundworm) capable of infecting many warm-blooded carnivores and omnivores, including swine.

The abbreviation *USDA* would refer to the United States Department of Agriculture.

The term *validated test* would be defined as an analytical method licensed by APHIS or accepted by AMS for the diagnosis of *Trichinella spiralis* in swine.

A *veterinary medical officer* or *VMO* would be defined as a veterinarian employed by the State or Federal Government who is authorized to perform official animal health activities on their behalf.

We would define a *waste feeding logbook* as a written record that documents the presence of good production practices with respect to the feeding of meat-containing waste to swine and compliance with applicable State and Federal food waste feeding laws and regulations.

Program Participation

Proposed § 149.2 would provide information on producer participation in the trichinae certification program. A producer's initial enrollment and continued participation in the program would require that the producer adhere to all of the required good production practices, as confirmed by periodic site audits, and comply with other recordkeeping and program requirements provided in proposed part 149. Pork production sites accepted into the program by APHIS would participate under one of the following three program stages: Stage I enrolled, Stage II certified, or Stage III certified.

Stage I Enrolled Status

Under proposed § 149.2(a), attaining Stage I enrolled status would signify that a pork production site has met all of the required good production practices and other recordkeeping and program requirements provided in part 149. Although enrolled in the program, Stage I enrolled sites would not be able to identify their swine as products from a certified production site. If a Stage I enrolled site is found not to be adhering to one or more good production practices as a result of a site audit or a spot audit, or fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment for consideration as a Stage II certified site, it would lose its status as a Stage I enrolled site. As provided in § 149.3(d), the site audit must be performed no sooner than 150 days from the date the site was awarded Stage I enrolled status, and must be completed, with the audit form and payment submitted to APHIS, no later than 210 days from the date the site was awarded Stage I enrolled status.

Stage II Certified Status

Under proposed § 149.2(b), attaining Stage II certified status would signify that a pork production site is adhering to all of the required good production practices and complies with other recordkeeping and program requirements provided in part 149. An APHIS-issued certificate or letter indicating the site's status as a Stage II certified site would have to be filed at the site and be readily available for inspection. Once a site attains Stage II certified status, it would then be able to identify its swine as certified product from a certified production site.

A Stage II certified site that is found not to be adhering to one or more good production practices as a result of a site audit or a spot audit, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment for consideration as a Stage III certified site, would be decertified by APHIS and would be ineligible to identify swine from that site as certified product from a certified production site. As provided in § 149.3(e), a Stage II certified site must complete a site audit for Stage III certified status. Under § 149.3(e), the site audit must be performed no sooner than 240 days from the date the site was awarded Stage II certified status, and must be completed, with the audit form and payment submitted to APHIS, no later than 300 days from the date the site was awarded Stage II certified status. As further provided in § 149.2(e), once a site is decertified, the producer would have to repeat the process of requesting a new site audit for Stage I enrolled status. If a decertified site is reenrolled after a successful Stage I site audit, then a new program anniversary date for that site would be established based on the date of enrollment and the site would be reinstated at Stage II status.

Stage III Certified Status

Proposed § 149.2(c) would cover sites attaining Stage III certified status. The primary distinction between Stage II and Stage III certified sites would be that once a site is awarded Stage III certified status, it would not be required to undergo another site audit for recertification for another 14 to 16 months. In contrast, a Stage II certified site would have to undergo another site audit 8 to 10 months after it receives its Stage II certification. We would allow a longer period to elapse between site audits for Stage III sites based on their record of already successfully completing site audits at the Stage I and Stage II program levels. All other aspects of Stage III certification would be the same as described above in the discussion of Stage II certification.

Change in Ownership

Proposed § 149.2(d) would provide the steps to be taken in the event there is a change of ownership in a site participating in the program. If there is a change in ownership in a Stage I enrolled site, and the new ownership wishes to remain in the program, then the Stage I enrolled site would continue on the same timetable as under the previous ownership for completing a site audit for Stage II certified status. No additional site audit would be required as a result of the change of ownership since another site audit would occur anyway within 6 months or less if the site intends to remain in the program.

If there is a change of ownership in a Stage II or Stage III certified site, however, we would require that a site audit be performed within 60 days of the ownership change in order for the site to maintain its certified status. If the site audit is satisfactory, then the Stage II or Stage III certified site would continue in the program only as a Stage II certified site. We would require a Stage III certified site to revert to Stage II certified status after a change in ownership so that the site would have another site audit within 1 year's time. This would provide us with greater assurances that the new ownership is adhering to the good production practices. A new program anniversary date for purposes of performing future audits would be established based on the date the site was audited to continue in the program as a Stage II certified site.

If the results of a site audit following a change in ownership are not satisfactory, then the site would be decertified by APHIS. Should the producer wish to participate in the program once again, he or she would have to request a new site audit for Stage I enrolled status once the particular deficiencies have been resolved. If a site is decertified by APHIS, but is reenrolled after a successful Stage I site audit, then a new program anniversary date for the site would be established based on the date of reenrollment.

Site Decertification and Program Withdrawal

Proposed § 149.2(e) would cover site decertification by APHIS, as well as voluntary site decertification and voluntary program withdrawal initiated by the producer.

Decertification by APHIS

In proposed § 149.2(e)(1), a Stage II or Stage III certified site that is found not to be adhering to one or more good production practices as a result of a site audit or a spot audit, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment to continue participation in the program, would be decertified by APHIS. Once a site is decertified, swine from that site could not be identified as certified product from a certified production site. In order to participate in the program once again, the producer would have to follow the procedures for requesting an initial site audit for Stage I enrolled status. If a decertified site is reenrolled after a successful Stage II site audit, then a new program anniversary date for that site would be established based on the date of reenrollment.

Temporary Withdrawal by Producer

Proposed § 149.2(e)(2) would provide that a producer may request that one or more of their certified production sites be temporarily withdrawn from the program. A producer might choose this option because he or she foresees not having access to animals from certified sources on a temporary basis. A producer's request to have a site temporarily withdrawn would have to be made in writing and would be subject to the APHIS Administrator's approval. Each site could be temporarily withdrawn no more than once every 2 years for a period not to exceed 180 days.

While a site is temporarily withdrawn, the producer could not identify swine from that site as certified product from a certified production site. However, the producer would still have to adhere to all good production practices and other program requirements while the site is temporarily withdrawn, unless specifically waived by the Administrator. This would include providing documentation in the animal movement record of the arrival and departure of all swine from the site, as well as whether the swine arriving at the site are from certified or noncertified sources.

Before being reinstated as a certified production site, the temporarily withdrawn site would have to pass a site audit to indicate that it is adhering to all good production practices (including any practices previously waived by the Administrator). If swine 5 weeks of age or older originating from noncertified sources are received at the site during the time of withdrawal, then the site audit would have to be performed within 30 days of the date the last swine from noncertified sources was removed from the site, but no later than 180 days from the date the site was granted temporarily withdrawn status. If the site audit is satisfactory and it is determined that the site is adhering to good production practices and other program requirements, then the site would be reinstated as a Stage II certified site (regardless of the site's previous status as a Stage II or Stage III certified site). The timetable for performing future site audits for attaining and renewing Stage III certified status would be based on the date the site was reinstated as a Stage II certified site.

If the site audit for reinstatement as a certified production site is not satisfactory due to the producer's failure to adhere to one or more good production practices, or if the period of temporary withdrawal has exceeded 180 days, then the site would be decertified by APHIS. Once the site is withdrawn by APHIS, the producer would have to request an initial site audit for Stage I enrolled status in order for the site to be reenrolled in the program. If a site is withdrawn by APHIS and then reenrolled after a successful Stage I site audit, then a new program anniversary date for that site would be established based on the date of reenrollment as a Stage I enrolled site.

Program Withdrawal

Under proposed § 149.2(e)(3), if a producer decides to withdraw one or more pork production sites from the program, then the producer would have to notify the APHIS Administrator in writing of this intent. Once this is done, the site would be removed from the program. If at a later date the producer requests that the site be reinstated in the program, then the producer would have to follow the procedures for requesting an initial audit for Stage I enrolled status. If the site is reenrolled after a successful Stage I site audit, then a new program anniversary date for that site would be established based on the date of reenrollment.

Request for Review

Under proposed § 149.2(f), if there is a conflict as to any material fact relating to the results of a site audit, spot audit, or other determination affecting a producer's program status or ability to participate in the program, the producer may submit a written request for review to the APHIS Administrator. The producer would have to include in the request the reasons, including any supporting documentation, why the audit result or other determination should be different than the result or determination made by the Administrator. The initial audit result or other determination would remain in force pending the completion of the Administrator's review. The decision by the Administrator upon reviewing the producer's written request would be final.

Site Audit

Proposed § 149.3 would contain more specific information on performing site audits. Proposed § 149.3 also would describe all of the required good production practices that would be the primary basis for determining whether a site can participate in the program.

General

Proposed § 149.3(a) would set forth the procedures for arranging and performing a site audit, as well as the process for providing notification of the audit results. This paragraph would apply to sites seeking status as a Stage I enrolled or a Stage II certified site, as well as sites seeking or renewing their status as a Stage III certified site.

The producer would be responsible for contacting a QAV to request a site audit. A list of available QAVs could be obtained by accessing the Trichinae Certification Program Web site on the Internet at *http://www.aphis.usda.gov/vs/trichinae*, or by contacting the APHIS area office. Telephone numbers for APHIS area offices can be found in local telephone books or on the Internet at *http://www.aphis.usda.gov/vs/area_offices.htm*. If a QAV is not available to perform a site audit, the producer could then contact the APHIS area office to request that a QVMO perform the site audit. The site audit would be arranged at a mutually agreed-upon time. We also would require that the producer or the producer's designated representative accompany the auditor during the site audit.

While performing the site audit, the auditor would record whether the producer is adhering to good production practices at the site, as discussed below in proposed § 149.3(b), that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis.* In performing the site audit, the auditor would use APHIS-approved audit forms. Once the auditor has completed all sections of the audit form, the producer or the producer's designated representative would have to sign the audit form attesting to the accuracy of the information obtained during the site audit. The producer's signature also would evidence his or her intent to continue adhering to the good production practices and other program requirements. The auditor also would sign the audit form at this time.

The producer would be responsible for the cost of each site audit performed at the pork production site. If a QAV performs the site audit, then the producer would pay the QAV directly at a mutually agreed-upon time and rate. If a QVMO performs the site audit, then the producer would pay the QVMO at the time the site audit is performed in accordance with the rate and other conditions set by the QVMO's governmental employer. In the case of a site audit performed by a QVMO employed by APHIS, the producer would pay APHIS by certified check or U.S. money order for this service at a rate determined in accordance with proposed § 149.8.

In addition to the cost of the site audit, the producer also would have to pay a separate fee, as specified in proposed § 149.8, to cover APHIS' administrative costs in processing the audit and operating the program. We are proposing a program fee of $51, payable to APHIS by certified check or U.S. money order, to be remitted to the auditor at the time each site audit is performed. To arrive at the program fee of $51, APHIS examined costs associated with the pilot program and itemized those costs based on 127 applications processed during the pilot program.[2]

The basic steps in the calculation for each particular service are: (1) Calculate direct labor costs by determining the average amount of direct labor required to perform the service and multiply the average direct labor hours by the average salary and benefit costs for employees; (2) calculate the pro rata share of administrative support costs; (3) determine the premium costs (if any); (4) calculate the pro rata share of agency overhead and departmental charges, respectively, including the salary of the National Coordinator; (5) add all costs; and (6) round up to the next $0.25 for all fees less than $10 or round up or down to the nearest dollar for all fees greater than $10. Table 1 below shows how APHIS arrived at this rate.

TABLE 1.—COSTS CONSIDERED IN ARRIVING AT THE $51 PROGRAM FEE

[Based on 127 applications processed]

	Number of hours	Hourly salary (FY 05)	Benefits @24.26%	Direct labor costs
Direct Labor:				
Area Epidemiology Officer[2]	13.23	$42.55	$10.32	$699.58
Clerk[3]	71.44	16.29	3.95	1,445.77
Inspector[4]	25.40	29.63	7.19	935.18
Total direct labor costs				3,080.53
Support costs at 62.31%				1,919.47
Subtotal				5,000.00
Agency overhead at 16.15%				807.50
Subtotal				5,807.50
Departmental charges at 4.57%				265.40
Subtotal				6,072.90
Reserve component				303.64
Total full cost for processing 127 applications				6,376.54
Full cost per application				50.21
Full cost per application, rounded up to the nearest whole dollar				$51.00

[2] Includes time to review the application, compare to standards, identify any nonconformities, call the auditor (if necessary), approve/deny application, and sign.

[3] GS 5/step 5 clerk (includes time to process and file paperwork, identify auditing veterinarian, and perform data entry).

[4] GS 11/step 5 inspector (includes time for spot audits).

[2] FSIS and AMS would not charge any additional program fees for the site audit, however, FSIS does charge $15 for export certificates.

The auditor will submit the completed audit form, program fee, and payment for services (if the auditor was an APHIS-employed QVMO) to the nearest APHIS area office. If a QAV performs the site audit rather than a QVMO, the QAV will submit the completed audit form and program fee to APHIS in a timely manner.

Upon receipt of the completed audit form and payment, APHIS would evaluate the site audit and provide the producer with written notification of the audit results. A pork production site found to meet all good production practices and other program requirements would be issued program status at the appropriate program stage. If the audit shows that the site does not meet all good production practices or other program requirements, APHIS would provide the producer with written notification that would include documentation of the deficiencies that prevented the site from being conferred program status. It would be the producer's responsibility to work with a veterinarian or other consultants to correct those deficiencies should the producer seek to enroll in the program at a later time.

Good Production Practices

Proposed § 149.3(b) would set forth all of the required good production practices that producers would have to adhere to in order to participate in the program. As discussed previously, these good production practices are designed to reduce, eliminate, or avoid those risk factors involving the exposure of swine to *Trichinella spiralis*. The good production practices would be as follows:

- The movement of all non-breeding swine 5 weeks of age or older into or from the pork production site would have to be documented in an animal movement record, as provided in proposed § 149.7, that ensures that all such swine moved into or from the site can be subsequently traced back to that site, or to any previous site (if applicable). Additional information relating to the animal movement record is provided below under the heading ''Recordkeeping at Site.''
- All non-breeding swine entering a site would have to have originated from another certified production site, except that non-breeding swine less than 5 weeks of age may have originated from a certified or noncertified production site. We would provide this exception because swine less than 5 weeks of age do not as yet eat solid food, and therefore do not present a risk of ingesting the *Trichinella spiralis* parasite through infected food sources. The animal movement record would have to include the TIN of the certified production site from which the swine originated. If the swine are less than 5 weeks of age and come from a noncertified site, then the animal movement record would have to provide the name and full address of the noncertified site where the swine originated.
- Feed or feed ingredients from offsite sources that are used at the site would have to meet all good manufacturing practices or other quality assurance standards recognized by the feed industry. The adherence to good manufacturing practices or other quality assurance standards would have to be documented in a feed mill quality assurance affidavit. Additional information relating to the feed mill quality assurance affidavit is provided below under the heading ''Recordkeeping at Site.''
- Swine housing and feeding areas, feed preparation and storage areas, and office areas and connecting hallways at the site would have to be inspected regularly and found free of fresh signs of rodent and wildlife activity. Any movable rodent harborage (exterior or interior) on the site that is not necessary to the day-to-day operation of the site would have to be removed. Harborage that cannot be removed or is movable but necessary to the day-to-day operation of the site (*e.g.*, bales of hay, etc.) would have to be checked for signs of rodent or wildlife activity. In addition, domesticated animals, including pets such as dogs and cats, would have to be excluded from the swine housing and feeding areas and feed preparation and storage areas at the site. Evidence of rodent activity or rodent infestation would consist of fresh rodent droppings, fresh gnawing marks, new structural damage, rodent urine, rodent blood, rodent smear marks (body oil), rodent tracks, or recent burrowing or burrow use. Evidence of wildlife activity would consist of wildlife feces, footprints, fur, or hair observed in or near the stored feed or feed ingredients, dead or live wildlife observed in or near the stored feed or feed ingredients, or wildlife burrows or nests observed in or near the stored feed or feed ingredients. Exterior rodent bait stations and/or traps would have to be placed around the perimeter of those building(s) housing the swine, as well as around the perimeter of outdoor swine feeding areas. Exterior rodent bait stations and/or traps also would have to be placed around areas of potential rodent entry into building(s) used to house and feed swine (*i.e.*, doorways, vent openings, loading chutes, cool cells, etc.). Interior rodent bait stations and/or traps would have to be placed near high-risk rodent zones such as entryways, hallways, office areas, swine load out areas, vents, cool cells, storage areas, utility rooms, cabinets, locker rooms, bathrooms, and break rooms. Interior rodent bait stations and/or traps would have to placed so that swine would not come in contact with the bait or trap. Rodent bait stations and/or traps also would need to be placed near exterior or interior harborage on the site that cannot be removed or that is movable but necessary to the day-to-day operation of the site. In all instances, rodent bait stations would have to be intact, systematically maintained, and contain fresh bait that consists of an EPA-registered rodenticide formulation that is applied according to its label. In addition, a sterile zone would have to be maintained around the perimeter of those building(s) used to house and feed swine. The sterile zone would have to be devoid of harborage or feed or water sources that could attract rodents or wildlife, but would have to contain rodent bait stations and/or rodent traps. The sterile zone also would have to be devoid of any vegetation unless it is decorative vegetation that is well maintained (*i.e.*, residential height grass, flowers, shrubs, or trees). A sterile zone with decorative vegetation would require increased rodent control measures. The producer would need to provide documentation of rodent control practices, as described above, by maintaining at the site an up-to-date rodent control logbook with a site diagram and other recordkeeping evidencing implementation of rodent control measures, which could include documents provided by a pest control operator, as provided in proposed § 149.7. Additional information relating to the rodent control logbook is provided below under the heading ''Recordkeeping at Site.''
- Feed or feed ingredients stored at the site would have to be prepared, maintained, and handled in a manner that protects the feed or feed ingredients from possible exposure to or contamination by rodents or wildlife. Any movable harborage in the immediate vicinity of feed production and feed storage areas that is not necessary to the day-to-day operation of the site would have to be removed. Harborage that cannot be removed or harborage that is movable but necessary to the day-to-day operation of the site (*e.g.*, bales of hay, etc.) would have to be checked for signs of rodent or wildlife activity. Rodent bait stations and/or traps would need to be placed

around (and in, if applicable) all feed preparation and storage areas, as well near any harborage in the vicinity that cannot be removed or that is movable but necessary to the day-to-day operation of the site. Rodent bait stations would have to be intact, systematically maintained, and contain fresh bait that consists of an EPA-registered rodenticide formulation that is applied according to its label. In addition, feed or feed ingredients that are stored in paper bags would have to be elevated off the floor and be a sufficient distance away from the walls to allow for inspection, baiting, and/or trapping. The rodent control logbook, as provided in § 149.7, would have to document that adequate rodent control procedures have been implemented in the feed production and feed storage areas.

- Swine could not have access to wildlife harborage or dead or live wildlife at the site. Wildlife harborage would include wood or wooded lots and other natural areas where wildlife would have access. Dead or live wildlife could not be intentionally fed to swine.
- If meat-containing waste is fed to swine at the site, then the producer would have to hold a license or permit that authorizes the feeding of such waste. Cooking times and temperatures of meat-containing waste to be fed to swine would have to be consistent with applicable State and Federal laws and regulations. In addition, up-to-date records of waste feeding and cooking practices, in the form of a waste feeding logbook provided for in proposed § 149.7, would have to be maintained at the site. Cooked food waste products that are stored prior to feeding could not be mixed or contaminated with uncooked or undercooked meat waste material. Household food waste, regardless of whether it contains meat or is cooked or undercooked, also could not be fed to swine. We include this last requirement as another measure to prevent the attraction of rodents or wildlife to the site. Additional information relating to the waste feeding logbook is provided below under the heading ''Recordkeeping at Site.''

(The Swine Health Protection Act [SHPA, 7 U.S.C. 3801–3813] was enacted in 1980 to prevent the introduction of foreign animal diseases to U.S. domestic swine populations as a result of being fed raw or improperly treated food waste of animal origin. APHIS' regulations promulgated under the SHPA in 9 CFR part 166 require the following: Persons must have a license to feed waste materials, food waste products must undergo proper heat treatment prior to being fed to swine, facilities and animals are subject to periodic inspection, and records must be maintained with respect to the removal of all treated and untreated garbage from the licensee's premises. The Federal laws and regulations establish a minimum set of standards to be followed. States are free to set more stringent standards [which a number of States have done], including the prohibition of feeding of food waste materials to swine altogether.)

- The site would need to have in place procedures that are carried out with regard to the prompt removal and proper disposal of dead swine and swine remains found in pens. We would require this practice to eliminate the opportunity for cannibalism among swine, as well as to prevent the attraction of rodents or wildlife. Such procedures would have to be documented in the animal disposal plan, as provided in proposed § 149.7. Additional information relating to the animal disposal plan is provided below under the heading ''Recordkeeping at Site.''
- General hygiene and sanitation of the pork production site would have to be maintained at all times to prevent the attraction of rodents and wildlife. We would require that solid non-fecal waste (facility refuse) be placed in covered receptacles and be regularly removed from the site. We also would require that spilled feed be regularly removed and properly disposed of.
- All records required under proposed § 149.7 would have to be kept up-to-date and readily available for inspection at the site. Additional information relating to producer recordkeeping requirements is provided below under the heading ''Recordkeeping at Site.''

Initial Site Audit for Stage I Enrolled Status

Proposed § 149.3(c) would cover the steps for producers seeking to enroll their pork production site in the program. Interested producers should first request and review a pre-audit information packet prepared by APHIS that discusses the program, as well as the steps in preparing for and requesting an initial site audit. The pre-audit information packet could be obtained from a QAV, State or Federal animal health offices, or the National Pork Board, or by writing to: USDA, APHIS, Veterinary Services, Trichinae Certification Program, 210 Walnut St., Room 891, Des Moines, IA 50309.

When the producer and the producer's herd health personnel believe that the site meets program standards, the producer then should arrange for an initial site audit, as discussed above under proposed § 149.3(a). Upon completion of the initial site audit and submission of the completed audit form and payment, APHIS would make a determination as to program enrollment within 30 days of receipt of the audit form. A pork production site that is found to meet all good production practices and other program requirements would be awarded Stage I enrolled status.

Site Audit for Stage II Certified Status

Proposed § 149.3(d) would cover the steps for a Stage I enrolled site to advance in the program as a Stage II certified site. The site audit would have to be performed no sooner than 150 days (i.e., approximately 5 months) from the date the site was awarded Stage I enrolled status, and would have to be completed, with the audit form and payment submitted to APHIS, no later than 210 days (i.e., approximately 7 months) from the date the site was awarded Stage I enrolled status. APHIS would make a determination on whether to certify the site within 7 days of receiving the completed audit form and payment. We would provide this expedited review for sites seeking status as Stage II certified sites so that producers could start identifying their animals as certified swine, assuming that the Stage I enrolled site is found to meet all good production practices and other program requirements and is awarded Stage II certified status.

A Stage I enrolled site that is found during a site audit not to be adhering to one or more good production practices, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment, would not be awarded Stage II certified status and would lose its program status as a Stage I enrolled site.

Site Audit for Stage III Certified Status

Proposed § 149.3(e) would cover the steps for a Stage II certified site to advance to Stage III certified site status. The site audit would have to be performed no sooner than 240 days (i.e., approximately 8 months) from the date the site was awarded Stage II certified status, and would have to be completed, with the audit form and payment submitted to APHIS, no later than 300 days (i.e., approximately 10 months) from the date the site was awarded Stage II certified status. APHIS would review the completed audit form and make a determination as to Stage III certified status within 30 days of receipt of the audit form and payment.

A Stage II certified site that is found to meet all good production practices and other program requirements would be awarded Stage III certified status. If a Stage II certified site is found during a site audit not to be adhering to one or more good production practices, or fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment, then the site would be subject to decertification by APHIS as provided in proposed § 149.2(e).

Site Audit for Renewal of Stage III Certified Status

Proposed § 149.3(f) would cover the steps for Stage III certified sites seeking to renew their program status as a Stage III site. The site audit would have to be performed no sooner than 14 months from the date the site was awarded Stage III certified status or the date that status was last renewed, and would have to be completed, with the audit form and payment submitted to APHIS, no later than 16 months from either the date the site was awarded Stage III certified status or the date that status was last renewed. APHIS would review the completed audit form and make a determination as to the site's continued status as a Stage III certified site within 30 days of receipt of the audit form and payment.

A Stage III certified site that is found to meet all good production practices and other program requirements would have its status as a Stage III certified site renewed. If a Stage III certified site is found during a site audit not to be adhering to one or more good production practices, or fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment, then the site would be subject to decertification by APHIS as provided in proposed § 149.2(e).

Spot Audit

In addition to regularly scheduled site audits, certified production sites also would be subject to spot audits. Spot audits, including random spot audit and spot audits for cause, would be covered in proposed § 149.4.

The APHIS Administrator would select certified production sites at random for a spot audit in order to:

- Ensure the integrity of the auditing process;
- Verify that the audit process is performed in a consistent manner across the program; and
- Verify that all required good production practices are being maintained between regularly scheduled site audits.

A certified production site also could be subject to a spot audit for cause to trace back and investigate any positive test results based on testing of certified swine from that site at the slaughter facility.

All spot audits would be performed by a QVMO at no cost to the producer. APHIS would provide the producer with written notification of the results of the spot audit, including documentation of any deficiencies noted during the audit. If the site is found not to be adhering to one or more good production practices, then the site would be subject to decertification by APHIS as provided in proposed § 149.2(e).

Offsite Identification and Segregation of Certified Swine

Under proposed § 149.5, certified swine moved from the certified production site to another location, whether to another certified production site, buying station, collection point, or slaughter facility, would have to remain segregated from noncertified swine at all times, and otherwise maintain their identity as certified swine in such a way that they could be readily traced back to the certified production site from which they came. Information relating to the identification of the certified swine would have to be documented in the animal movement record maintained by the producer. Failure to properly segregate or maintain the identity of certified swine from noncertified swine after leaving the certified production site would result in the loss of certified status for that shipment of swine. We would leave it up to producers or other handlers to determine how they wish to segregate the certified swine and otherwise maintain their identity as certified swine throughout the marketing process.

Slaughter Facilities

Proposed § 149.6 would cover the program responsibilities of participating slaughter facilities in regard to the verification, segregation, testing, and recordkeeping of swine from certified production sites. Participating slaughter facilities that fail to comply with any of the applicable requirements of § 149.6 would not be allowed to continue participating in the program and no pork or pork products will be issued a certificate of export that identifies the product as being from the Trichinae Certification Program unless all requirements of this section are followed. This would not preclude, however, FSIS from issuing an export certificate for those products if they were to be instead sent to a country that did not require certifications with respect to trichinae or if the products were subsequently frozen in order to meet an importing country's requirements in that way. FSIS would provide general oversight to verify that these functions are being carried out properly, while AMS would specifically oversee the laboratory approval and ongoing performance of laboratories that perform process-verification testing under this program. FSIS would issue instructions to slaughter facilities relating to program requirements at the time any final rule implementing the program described in this proposed rule is published. Further information with regard to laboratory approval requirements would be available from AMS as discussed under ''Process-Verification Testing of Certified Swine.''

Verification of Certification

Proposed § 149.6(a) would require that a slaughter facility receiving certified swine verify the current certification status of the pork production site from which the animals came. The slaughter facility could verify the current certification status of individual sites by maintaining dated certification documentation on file. The current certification status of individual sites also would be available on the Trichinae Certification Program Web site on the Internet at *http://www.aphis.usda.gov/vs/trichinae.* If the slaughter facility is unable to verify a site's certification status through documentation on file or through the program Web site, the slaughter facility then should contact the APHIS area office in the State where the site is located.

Maintaining Identity and Segregation of Certified Swine and Pork Products

Proposed § 149.6(b) would require that in order for a slaughter facility to identify product as certified pork, the certified swine and edible pork products derived from certified swine would have to remain segregated from swine and edible pork products from noncertified sites throughout receiving, handling, and processing at the facility, as well as while awaiting shipment from the facility. The slaughter facility also would have to maintain the identity of the certified swine or pork in a manner that would allow the swine or pork to be traced back to the certified production site from which it came. A slaughter facility's failure to properly segregate or maintain the identity of certified swine and edible pork products derived from the certified swine would result in the loss of certified status for that shipment of swine, as well as the

edible pork products derived from those animals. It would be up to the slaughter facility to determine how it wishes to segregate and properly maintain the identity of certified swine and edible pork products derived from certified swine in its control. It is recommended that certified swine be processed in groups either at the beginning or at the end of the day or on separate days from noncertified animals.

Process-Verification Testing of Certified Swine

Proposed § 149.6(c) would require slaughter facilities handling and processing certified swine from certified production sites to carry out process-verification testing at their expense in order to determine the *Trichinella spiralis* infection status of those animals. Under proposed § 149.6(c)(1), process-verification testing would have to be performed by using a validated test. This would include any test licensed by APHIS, such as those using the ELISA method, or otherwise accepted by AMS, such as the pooled sample digestion method. A copy of the testing methods and checklist for conducting validated tests would be available by contacting the Trichinae Program Manager, USDA, AMS, Science and Technology, Technical Services Branch, 1400 Independence Avenue SW., Mail Stop 0272, Washington, DC 20250–0272; or by telephone at (202) 690–0621.

In proposed § 149.6(c)(2) we would require that such testing be performed in an approved laboratory that has been approved for trichinae testing by AMS. In addition to providing services relating to initial laboratory approval, AMS would monitor the ongoing performance and proficiency of laboratories that perform process-verification testing under the program.

The approved laboratory could be maintained and operated by the slaughter facility or by another business entity either on the premises of the slaughter facility or at another location. We would require that the laboratory staff performing the process-verification testing be approved by AMS. Once approved, laboratory staff performing this particular testing function would be subject to periodic proficiency test panels from AMS that would have to be analyzed correctly in order to maintain their approved status. This periodic proficiency testing would be done for purposes of quality assurance. Further information on approved laboratory requirements, including any annual certification fee information, could be obtained by contacting the AMS Trichinae Program Manager.

Proposed § 149.6(c)(3) would cover the requirements for process-verification testing relating to sample size and testing frequency. We would require that process-verification testing be performed in accordance with the following minimum standards relating to sample size and frequency:

- Slaughter facility officials would need to determine the yearly processing capacity of the slaughter facility over the next 12 months. Officials could use the processing capacity during the past 12 months if the past 12 months were representative of a typical year.
- Slaughter facility officials would have to estimate the percentage of swine processed that would likely come from certified production sites considering all swine expected to be processed during the selected 12-month period. Swine that come from certified production sites would be considered the eligible population to be sampled.
- Slaughter facility officials would then need to use the Trichinae Certification Slaughter Facility Sample Size Determination Table to determine the number of samples to collect from the population of swine from certified production sites. If the eligible population is not shown in the table, the next largest number would be used to determine the number of samples to collect. Slaughter facility officials would select from the table the number of samples to collect from the column that reflects a 99 percent confidence level of detecting a positive carcass in the population. The number selected would represent the total number of samples that slaughter facility officials would have to collect and test per year and per month during the selected 12-month period.
- We would require that for each sample collected, slaughter facility officials would have to maintain the identity of the sample using the TIN of the certified production site that was the source of the swine from which the sample was taken.
- FSIS program employees at the slaughter facility would review and verify that an adequate number of samples have been collected and proper frequency of collection is maintained. FSIS would report this information to APHIS.
- AMS representatives would verify through a laboratory approval audit that the laboratory performing process-verification testing is correctly following written procedures relating to the receipt, handling, identification, and testing of samples. These written procedures would have to be maintained by the laboratory in a quality assurance manual, as explained below under proposed § 149.6(c)(6). In addition, a laboratory that performs process-verification testing at a location other than the slaughter facility would have to include a declaration of methodology used to test samples when providing test results.
- The APHIS Administrator may also, at APHIS' expense, periodically request the testing of swine brought to the slaughter facility from specific certified production sites. Requests to test swine from specific certified production sites would count towards the slaughter facility's total monthly testing requirement.

Proposed § 149.6(c)(4) would cover the requirements with regard to the handling of test results. We would require that the results of process-verification testing of certified swine handled at the slaughter facility be retained in a separate file or notebook as written records at the slaughter facility and be readily available for inspection by FSIS program employees. FSIS also would report to APHIS the results of all process-verification testing.

In the event of a positive test result, the slaughter facility representative would have to immediately notify the FSIS program employee designated by the FSIS Administrator, who in turn would report the TIN of the certified production site that was the source of the swine from which the sample was taken and the test results of the affected sample to the respective APHIS area office. The following sequence of events would take place following a positive test result:

- If a test sample is found positive based on the digestion method, then the certified production site that was the source of the swine from which the sample was taken would be decertified.
- If a test sample is found positive based on an ELISA test method, and is confirmed positive by further testing using the digestion method, then the certified production site that was the source of the swine from which the sample was taken would be decertified.
- If a test sample is found positive based on an ELISA test method, but is not confirmed positive by further testing using the digestion method, then the certified production site that was the source of the swine from which the sample was taken would be investigated by APHIS personnel. The investigation may include a spot audit of the affected site. Additional testing also may be performed. This investigation would determine if the production facility has sufficient safeguards and is following good production practices. While a certified production site is under investigation, the site's program status

as a certified production site would be suspended. While a site is under suspension, the producer would have to continue to adhere to all good production practices and other recordkeeping and program requirements; however, swine from the suspended site could not be identified as product from a certified production site. The APHIS Administrator would determine the program status of the site within 30 days of the initiation of the suspension. A finding that risk factors are inadequately addressed in the site investigation or the finding of additional positive test results based on samples from animals or carcasses from the affected site would be grounds for APHIS decertification of the site.

Proposed § 149.6(c)(5) would cover slaughter facility recordkeeping requirements relating to the handling of animals from certified production sites. We would require that all slaughter facilities that receive certified swine would have to maintain records with regard to the number of certified swine processed, the source of the certified swine, including the TIN of the certified production site from which the swine came, and all test results relating to process-verification testing. These records would have to be retained at the slaughter facility for a period of at least 3 years following the processing of such animals.

Slaughter facilities handling certified swine also would need to have documented procedures on how certified swine under its control, and the edible pork products derived from certified swine, would remain segregated from swine and edible pork products from noncertified sites throughout receiving, handling, and processing at the facility, as well as while awaiting shipment from the facility. The slaughter facility also would have to have documented procedures for maintaining the identity of the certified swine or pork with respect to the certified production site from which it came.

We also would require that all records and other documentation required to be maintained by the slaughter facility under proposed part 149 would have to be readily available for inspection by FSIS program employees.

Proposed § 149.6(c)(6) would cover recordkeeping requirements for approved laboratories that perform process-verification testing under this program. Approved laboratories would be required to have written procedures that specify standards for sample size, sample handling, sample identification, and sample test methods used in process-verification testing. All such written procedures would have to be maintained in a laboratory quality assurance manual specifically for this program, or as a separate section of an existing laboratory quality assurance manual, and would have to be retained at the approved laboratory throughout the time the approved laboratory is performing process-verification testing under this program. All such written procedures relating to process-verification testing also would have to be readily available for inspection by FSIS program employees or AMS representatives.

Proposed § 149.6(c)(7) would cover the slaughter facility overall responsibility for process-verification testing. In the event the testing is contracted to an outside approved laboratory, the slaughter facility would still retain overall responsibility that the testing is carried out as required. The slaughter facility would be responsible for obtaining testable samples and for ensuring that the correct number of testable samples are sent to the outside testing lab. Once the slaughtering facility receives those test results back from the outside testing lab, the slaughter facility would be responsible for maintaining those results in its trichinae testing records.

Recordkeeping at Site

Proposed § 149.7 would cover recordkeeping requirements for producers participating in the program. Under proposed § 149.7(a), Stage I enrolled sites, Stage II or Stage III certified sites, and any site that has been suspended or voluntarily decertified would have to maintain the following records: Animal disposal plan, animal movement record, feed mill quality assurance affidavit (if applicable), rodent control logbook, and waste feeding logbook (if applicable). All such records would have to be readily available for inspection at the pork production site at the time of an audit by a QAV or QVMO, or by other APHIS representatives during normal business hours.

Animal Disposal Plan

The animal disposal plan would have to meet certain minimum requirements. Specifically, the animal disposal plan would have to:

- Provide for the removal of all dead swine or swine remains from swine pens immediately upon detection. Inspections for purposes of detecting dead animals would have to occur at least once every 24 hours.
- Specify how often and at what intervals the swine pens are observed each day.
- Provide for the proper storage of dead swine or swine remains in accordance with local, State, and Federal laws and regulations. If the carcass storage facility or composting facility is located on the site, then the animal disposal plan would have to provide for a storage or composting facility that precludes rodent or wildlife contact with dead swine or swine remains being stored or composted.
- Provide for the disposal of swine and other mammals by rendering, incineration, composting, burial, or other means, as allowed by and in accordance with local, State, and Federal laws and regulations. For sites that use rendering services, the animal disposal plan also would have to include the name, address, and phone number of the renderer.
- Be updated as animal disposal practices are changed at the site.
- Be signed and dated by the producer as well as the caretaker of the site (if the caretaker is a different person than the producer).
- Be valid for a period no longer than 2 years after the date of signature by the producer and (if applicable) the site caretaker.

Animal Movement Record

The animal movement record would have to meet certain minimum requirements. Specifically, the animal movement record would have to:

- Be filled out completely and properly, accounting for the movement of all non-breeding swine into and from the pork production site.
- In the case of non-breeding swine coming into the site, include the date and number of arriving animals, as well as the TIN of the certified production site where the animals originated, or alternatively, if the swine are less than 5 weeks of age and originated from a noncertified site, the name and full address of the noncertified site where the animals originated. The animal movement record would have to clearly document that all non-breeding swine 5 weeks of age or older that arrive at the site originated from another certified production site.
- In the case of non-breeding swine leaving the site, include the date and number of departing animals, and their destination.
- Document the number of dead non-breeding swine that are removed from the site, as well as the number of dead non-breeding swine that are buried or composted at the site, if swine burial or composting is permitted in that State or locality.

All entries to the animal movement record would have to be signed or

initialed, as well as dated, by the producer or other site caretaker making the entry. We would take into account that pork production sites seeking Stage I enrolled status may have limited documentation regarding these activities. However, we would still require that such sites have initiated documentation that addresses these matters. The 180-day enrollment period would provide Stage I sites further opportunity to develop their recordkeeping.

Rodent Control Logbook

The rodent control logbook, which may include records from a pest control operator, would have to meet certain minimum requirements. Specifically, the rodent control logbook would have to:

- Include a rodent control diagram for the site indicating the location of all rodent bait stations and rodent traps at the site. The diagram would have to be updated whenever bait stations are added, moved, or removed.
- Document the number of rodent traps set (if applicable), the number of new rodent bait stations set, and how often bait is refreshed.
- Document the disposal method for all unused bait that is replaced.
- Document the brand name and active ingredient of bait, which would have to be EPA registered and applied according to its label, as well as the quantity of bait used (number of pounds).
- If possible, document the number of rodents caught or killed and indicate whether they are mice or rats.
- If possible, document the number of rats sighted monthly.

All entries to the rodent control logbook would have to be signed or initialed, as well as dated, by the producer or other site caretaker making the entry. It would have to be updated at least monthly.

Feed Mill Quality Assurance Affidavit

The feed mill quality assurance affidavit, to be used in conjunction with feed or feed ingredients delivered to the pork production site, would have to meet certain minimum requirements. Specifically, the feed mill quality assurance affidavit would have to:

- Include the name of the producer and the identity of the site, including the TIN if it has been issued, and the site address, as well as the name and address of the feed mill and the name and title of the feed mill representative.
- Provide that the feed mill is following good manufacturing practices, and further specify, as evidence of these good manufacturing practices, the following:

That the feed mill has a rodent control system that is maintained by the feed mill itself or by a pest control firm (include name and address of pest control firm);

The frequency with which such rodent control system is maintained (*i.e.,* on a weekly basis, etc.); and

That the feed mill maintains records of pest management practices or has records generated by a pest control operator, which would have to be made available to the producer upon request.

- Be signed by the feed mill representative and by the producer or the producer's designated representative, and would remain in effect for a period of 2 years.

Waste Feeding Logbook

If the producer feeds meat-containing food waste to swine at the site, the producer would have to maintain a waste feeding logbook that meets certain minimum requirements. Specifically, the waste feeding logbook would have to:

- Include the name of the producer and the identity of the site, including the TIN if it has been issued, the site address, and the number of the license or permit authorizing the feeding of such waste to swine.
- Be kept up-to-date with documentation evidencing adherence to applicable State and Federal food waste feeding laws and regulations.
- Provide information as to the method used in cooking the meat-containing food waste.
- For each batch of meat-containing food waste cooked, record the batch number (if applicable to the operation), the temperature at which such food waste is cooked and the length of time it is held at that temperature, and the method for verifying the temperature and length of time cooked.
- For each batch of meat-containing food waste cooked, document the sources of meat.
- Evaluate and document on at least a monthly basis the level of sanitation of the site, taking into account the following factors:

Whether garbage containers are clean and covered with lids;

Sanitation of cooking area and equipment;

Sanitation of feeding areas and waste disposal;

Sanitation of storage areas;

Rodent control system around equipment, storage, and feeding areas;

Sanitation of waste hauling trucks or containers;

Access of other animal species to food waste (wild animals, dogs, cats, etc.); and

The potential for cross-contamination between cooked product and raw meat-containing food waste.

All entries to the waste feeding logbook would have to be signed or initialed, as well as dated, by the producer or other site caretaker making the entry.

Under proposed § 149.7(b), we would require that all required records and other documentation to be maintained by producers in the program would have to be kept at the pork production site for a period of 2 years. In addition, under proposed § 149.7(c), we would require that these records be readily available for inspection at the pork production site at the time of an audit by a QAV or QVMO, or by other APHIS representatives during normal business hours.

Program Fees and Charges

Proposed § 149.8 would address the subject of program fees and charges. The producer would be responsible for the cost of each site audit performed at the pork production site. If a QAV performs the site audit, then the producer would have to pay the QAV directly at a mutually agreed-upon time and rate. If a QVMO performs the site audit, then the producer would pay the QVMO at the time the site audit is performed in accordance with the rate and other conditions set by the QVMO's governmental employer. Further, if the QVMO who performs the site audit is employed by APHIS, then the producer would have to pay APHIS for this service at a prescribed hourly rate as set forth in proposed § 149.8. We are proposing that the rates for the services of an APHIS-employed QVMO would be $84 per hour and $21 per quarter hour, with a minimum charge of $25 per service. If an APHIS-employed QVMO performs the site audit outside his or her normal tour of duty, then the rates would increase to $100 per hour and $25 per quarter hour for Monday through Saturday and holidays and $112 per hour and $28 per quarter hour for Sundays. These proposed rates are comparable to current rates charged for other veterinary services conducted by APHIS employees, and are designed to recover the cost incurred by APHIS in providing these services. Payment to APHIS for the services of an APHIS-employed QVMO would have to be in the form of a certified check or U.S. money order and would have to be remitted to the QVMO at the time the service is provided.

In addition to the cost of the site audit, proposed § 149.8 would provide that the producer also would have to pay APHIS a program fee at the time of each site audit in the amount of $51 to cover APHIS' administrative costs in processing the audit and operating the program. This program fee, payable to APHIS by certified check or U.S. money order, would be due at the time of submitting the completed site audit form for APHIS evaluation. This program fee would not be subject to refund, regardless of the results of the site audit or other determination as to the producer's program status.

Finally, proposed § 149.8 provides that a producer would not be charged for the cost of having a spot audit performed at the pork production site.

Pilot Program Sites

In proposed § 149.9, pork production sites that are participating in an APHIS-approved trichinae pilot program at the time the final rule for establishing the Trichinae Certification Program becomes effective would maintain their same program status as either a Stage I enrolled, Stage II certified, or Stage III certified site, as well as their same program anniversary date for purposes of completing future site audits and submitting completed audit forms and payment. We are proposing this provision to recognize those producers that volunteered to participate in our pilot program and invested their time and effort, as well as the expenditure of money to upgrade their sites, in order to be in compliance with good production practices and other pilot program requirements.

Changes to 9 CFR Part 160

Section 160.1 of the regulations in 9 CFR part 160 contains definitions for terms appearing in parts 160 through 162 on accreditation of veterinarians. We are proposing to add a new definition to § 160.1 for the term *qualified accredited veterinarian* or *QAV*, which we would define as an accredited veterinarian who has been granted an accreditation specialization by the APHIS Administrator pursuant to § 161.5 of our regulations based on completion of an APHIS-approved orientation or training program. We would make this change in conjunction with another proposed change to part 161, as discussed below.

Changes to 9 CFR Part 161

The regulations in 9 CFR part 161 contain the requirements and standards for accredited veterinarians and suspension or revocation of such accreditation. We are proposing to add a new § 161.5 on specializations for accredited veterinarians. Under proposed § 161.5, an accreditation specialization recognized by the APHIS Administrator may be granted to an accredited veterinarian upon completion of an orientation or training program approved by APHIS. An accredited veterinarian who is granted such a specialization would be referred to as a qualified accredited veterinarian or QAV. For certain accredited specializations, the cost of orientation or training would be borne by the accredited veterinarian.

QAVs would be authorized to perform those activities and functions specifically provided for elsewhere in chapter I of 9 CFR. Additional information on accreditation specializations, including training requirements and fees, could be obtained by contacting the National Veterinary Accreditation Program, VS, APHIS, 4700 River Road Unit 46, Riverdale MD 20737, (301) 734–6188.

Under proposed § 161.5, the Administrator of APHIS would grant the status of qualified accredited veterinarian or QAV to those accredited veterinarians who complete an APHIS-approved orientation or training program covering that particular specialization. Therefore, an accredited veterinarian who completes the APHIS-approved training in good production practices in swine management could become a QAV, and then be authorized to perform site audits and other specified program services under the Trichinae Certification Program in part 149.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis. The economic analysis, which is set out below, provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this proposed rule on small entities as required by the Regulatory Flexibility Act.

We currently do not have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have prepared an initial regulatory flexibility analysis. We are inviting comments about potential effects of this proposed rule on small entities. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from the implementation of this proposed rule, and the economic effects of those benefits or costs.

In accordance with the Animal Health Protection Act (7 U.S.C. 8301–8317), the Secretary of Agriculture has the authority to promulgate regulations and conduct programs to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals). Such programs can include animals at a slaughterhouse, stockyard, or other point of concentration. The Secretary may also cooperate with State authorities, Indian tribe authorities, or other persons in the administration of regulations for the improvement of livestock and livestock products.

In accordance with 21 U.S.C. 601 *et seq.*, the Secretary of Agriculture is authorized to inspect meat and meat products at any slaughtering, packing, meat-canning, rendering, or similar establishment, while under 21 U.S.C. 451 *et seq.*, the Secretary of Agriculture is authorized to inspect poultry and poultry products at official establishments. Finally, in accordance with 7 U.S.C. 1621 through 1627, the Secretary of Agriculture is authorized to provide a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts.

Based upon available data and expected effects, we believe that some producers and facilities may come to the conclusion that the benefits of the proposed program, in terms of increased exports and lower costs to meet the requirements of importing countries, would justify the costs of their participation.

Costs for Participating Producers

According to USDA's National Agricultural Statistics Service (NASS), there were an estimated 75,350 hog and pig producers in the United States in 2002 [see NASS Agricultural Statistics, 2003 (Table 7–26)]. This was down from 80,880 producers in 2001. Since 2002, the number of producers has declined even further with 67,330 operations reported in 2005. Although the structure of the industry has changed over time, the number of hogs as well as consumption of pork has remained relatively constant over the same period. The number of producers who would participate in the certification program is not known. Participation by producers would depend primarily on

economic and other market competitiveness considerations. Participation will be based on how much of the producers' pork would enter into export markets that have trichinae requirements.

We believe that most producers, especially the larger ones, are likely to participate in the program. This is because they have already implemented and routinely follow many of the proposed good production practices required for certification. Industry experts have estimated that 90 to 95 percent of commercial pork production sites in the United States could meet the proposed program requirements for site certification with, at most, only minimal facility changes (i.e., those costing approximately $500 over a 5-year period, equivalent to a present value of about $440 when discounted at 7 percent). However, recent experience with the pilot program has shown that while 90 to 95 percent of these sites could meet the requirements with only minimal changes, it is likely that only 40 to 50 percent would actually choose to participate. In general, larger producers have more mitigations in place so they are more readily able to participate. Small producers could participate in the program as well as long as they are able to meet program risk mitigations. At worst, only moderate facility changes (i.e., those that cost $2,500 over 5 years) would likely be required. The estimated cost of $2,500 for moderate facility changes consists of $1,500 in first year startup costs and maintenance costs of $250 per year for the next 4 years. (For further information, see Cummings, David and Kopral, Christine, ''Cost Analysis of Trichinae-Free Program Alternatives,'' USDA, APHIS, Centers for Epidemiology and Animal Health, December 1998, referred to below as the CEAH analysis. Copies of the CEAH analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**).

Producers seeking to participate in the program would be required to pay the veterinarians' audit fees to perform both the initial and subsequent site audits. These fees are estimated at about $150 per audit. After the first three audits are completed over a 15-month period at a cost of $450, certified production sites would be subject to audits only once every 15 months.

In addition to the cost of the site audit, the producer would be responsible for paying a separate program fee to APHIS at the time of each site audit. This program fee would cover APHIS' administrative costs in processing the audit and operating the program. As proposed, the program fee would be $51. Also, producers may have to pay for the postmortem blood, tissue, or meat juice sample tests if the cost of these tests is passed on to them by the slaughter facilities.

Based on the information presented in the preceding paragraphs, we have prepared the following table summarizing the estimated costs of participating in the program over 5 years:

TABLE 2.—ESTIMATED COSTS FOR PARTICIPATING PRODUCERS

	Year				
	1	2	3	4	5
Estimated site audit fees	$300	$150	$150	$150	$150
Program fees	102	51	51	51	51
Subtotal	[1] 402	[2] 201	[3] 201	[3] 201	[3] 201
Facility improvement costs: [4]					
Minimal	100	100	100	100	100
Moderate	1,500	250	250	250	250
Yearly total	$502 to $1,902 year 1; $301 to $451 each year, years 2 to 5.				
5-year total	$1,706 to $3,706 over 5 years.				

[1] Assumes site audit and program fees for attaining both Stage I Enrolled and Stage II Certified status during year 1.
[2] Site audit and program fees for moving from Stage II to Stage III Certified status.
[3] Site audit and program fees for renewal of Stage III Certified status.
[4] Experience with the pilot program has shown that 90 to 95 percent of sites could meet program requirements with only minimal facility improvements, so only 5 to 10 percent of sites might have to incur the moderate facility improvement costs.

For producers that decide to participate in the program, a potential downside is the possibility that swine from their sites could test positive for trichinae at slaughter, resulting in a loss of program status as a certified site. Once a site is decertified, swine from that site could not be identified as product from a certified production site. In order to participate in the program once again, the producer would have to follow the procedures for requesting an initial audit for Stage I enrolled status.

It is reasonable to assume that most producers who decide not to participate in this program would be small in size, although there are some small producers that would also need to make only minimal changes to satisfy program requirements.

Costs for Participating Slaughter Facilities

The number of slaughter facilities that may wish to process certified swine and export their meat as produced under the Trichinae Certification Program is uncertain. As with producers, participation would depend on economic competitiveness considerations. Certain countries that import pork require testing for trichinae. Therefore, any facility that wants to export pork must meet these testing requirements. Slaughter facilities would have to determine whether it would be better to continue to follow their traditional trichinae testing protocols, or whether sourcing animals from certified producers while observing the program requirements for slaughter facilities would provide them an economic incentive.

Slaughter facilities that purchase swine from certified production sites would be required to carry out certain functions relating to verification, segregation, testing, and recordkeeping of certified swine under its control. Testing at the slaughter facility would entail taking tissue, blood, or meat juice specimens from a sample of the certified swine population processed at the facility in order to determine the

Trichinella spiralis infection status of the tested animals and to verify that the trichinae management practices at the production level are adequate. The number of required test samples would vary among individual facilities, depending on the total number of animals from certified production sites that are slaughtered. The testing requirements are designed to produce a 99 percent confidence level of detecting a positive carcass in the population based on a prevalence of 0.013 percent. For example, a plant that slaughters 1 million certified swine per year would be required to run 34,802 tests annually, but a plant that slaughters 5,000 certified swine per year would need to run 4,996 tests each year.

Slaughter facilities could conduct sample testing using either an ELISA or a pooled diaphragm test and would have the option of processing the test samples themselves at the slaughter facility or sending it to an offsite commercial laboratory. On-site processing of test samples should result in lower costs per test once the necessary testing equipment is in place. In this regard, it is anticipated that many slaughter facilities, especially the large and medium ones, would acquire ELISA test readers, regardless of whether they participate in the certification program, due to FSIS' HACCP inspection procedures and because of the public's demand for food safety and quality. ELISA test readers cost about $5,000 each, while pooled diaphragm digestion test readers cost $2,900.

An ELISA test costs approximately $0.83 per swine using the services of a commercial laboratory, and up to $0.66 per swine if processed by the slaughter facility itself. By comparison, a digestion test costs approximately $1.72 per swine if processed by a commercial laboratory, and $0.92 per swine if processed by the slaughter facility.[3]

An ELISA test, therefore, is less costly than a digestion test. However, if an ELISA test is used and the results are positive, then those findings would have to be confirmed by using a digestion test. For a large slaughter facility required to run 34,802 tests each year, the ELISA test would cost $28,886 annually if processed by a commercial laboratory and $22,969 if processed by the slaughter facility itself, and the digestion test would cost $59,859 annually if processed by a commercial laboratory and $32,018 if processed by the slaughter facility itself. For a small plant required to run 4,996 tests each year, the ELISA test would cost $4,147 annually off site and $3,297 annually on site, and the digestion test would cost $8,593 annually off site and $4,596 annually on site.

As discussed above, the number of slaughter facilities that would participate in the program by purchasing swine from certified production sites is uncertain. If slaughter facilities do wish to accept certified swine and identify pork as produced under the Trichinae Certification Program, it is not known whether they would absorb all the testing costs or pass on some of those costs to producers or consumers.

Slaughter facilities may experience negative effects from this proposed rule in the event of a trichinae positive test. Given the rarity of trichinae in swine currently, the likelihood of a positive test from an animal that comes from a certified production site would be small. However, if there was a positive test result, presumably there would be some cost to the slaughter facility since it could lose a source of certified animals if the site is decertified. The total cost to the slaughter facility in the event of a positive test is uncertain at this time.

Costs for Participating Accredited Veterinarians

The proposed rule would provide accredited veterinarians who are qualified to conduct site audits under the program with another source of revenue. To become qualified, accredited veterinarians would need to complete an APHIS-approved orientation or training program in good production practices in swine management. At least initially, APHIS would provide this special training to accredited veterinarians itself, charging them an amount sufficient to recover the Agency's costs, estimated at $50 per trainee. QAVs would need requalification training, but this would not occur more than once every 2 years, and the accredited veterinarians would be charged the same $50 fee. Currently, veterinarians do not have to pay a fee or receive periodic training to maintain accreditation status. However, for certain accredited specializations, such as conducting site audits under the trichinae certification program, we are proposing that the accredited veterinarian would be responsible for the cost of orientation and periodic training to perform this activity.

The special training would not be mandatory for accredited veterinarians, so any training costs would be voluntarily assumed. For those accredited veterinarians who do opt for the training in order to perform site audits for producers, the cost of the training would be offset by income in the form of fees received from producers for site audits.

Impact on Federal Agencies

Unlike traditional disease eradication programs, herd certification programs are indefinite, and exist for as long as the producer wishes to maintain certification status. Due to the changes in the meat inspection process that have occurred at the slaughter and processing level, increasingly, packers will require various forms of food security certifications as criteria for producers that wish to sell their product to them.

In fiscal year (FY) 2007, trichinae certification activities would shift from being in the pilot phase to the early national program roll out phase, assuming this proposed rule is implemented. In late FY 2007 or early FY 2008, the trichinae certification program would become a national program, available in increasing numbers of States and involving potentially thousands of herds. Initial national program emphasis would be placed on 5 of the 17 major swine producing States that account for approximately 94 percent of the Nation's total swine production, but the program would be made available to all who volunteer to participate.

Successful implementation of the trichinae certification program would require integration of APHIS on-farm activities with AMS and FSIS plant and processing actions to ensure the safety and quality of animal derived food products. The impacts on AMS and FSIS are expected to be minimal. AMS representatives would certify laboratories with respect to trichinae testing, and FSIS program employees would check records in plants to ensure compliance with testing and recordkeeping requirements, as well as provide general oversight that plants are carrying out other program responsibilities properly. The personnel and time requirements for AMS and FSIS to meet their obligations are not expected to be significant.

Export Benefits Associated with the Program

The proposed program is designed to increase sales and marketability of fresh pork products destined for foreign markets, which would benefit

[3] These figures are from the CEAH analysis. It is important that because the CEAH study was published in 1998, the findings are somewhat dated Throughout this analysis, the data used in the CEAH analysis have been updated where possible in order to obtain a more current estimate of the cost.

participating swine producers and slaughter facilities.

The United States is a net exporter of pork and has been the second largest exporter of pork, trailing the European Union (EU), in recent years. Other major exporters include Canada and Brazil. Japan, Mexico, and Canada are the primary markets for U.S. pork exports. The United States also exports pork to Russia and the EU, but these averaged less than 5 percent of total exports over the 2000 to 2005 period. Additionally, the United States is a net importer of pork in trade with the EU, with exports to the EU declining from 2001 to 2005. Although not certain, a voluntary trichinae certification program could increase opportunities for participating producers and slaughter facilities to export to countries that monitor for Trichinella spiralis in pork.

How much this program would increase U.S. pork exports is not known. U.S. pork exports have been increasing for the past decade and are expected to continue to increase. Approximately 9 percent of U.S. pork production is exported. Given the steady per capita domestic consumption over the past decade, if U.S. pork production is to continue to grow, the growth likely will be driven by export demand. A voluntary trichinae certification program is one step in keeping U.S. producers competitive in the world market.

According to Canadian animal health personnel, maintaining trichinae free status for most of Canada has been instrumental in facilitating the country's $1 billion annual export market for pork ($410 million in fresh cuts), as well as in maintaining its annual per capita consumption of pork totaling 28 kg (H. Ray Gamble, Trichinae Fact Sheet, *http://www.aphis.usda.gov/vs/trichinae/*). However, it should be noted that the majority of Canadian exports of pork go to the United States and Mexico, neither of which have trichinae-specific entry requirements for imported pork. So while it may be helpful, it is not certain that the proposed voluntary trichinae certification program would automatically lead directly to increased exports of pork and pork products.

The EU and Russia have traditionally been markets where the United States has not had a large presence. It is the industry's hope that the certification program would open these markets to more pork from the United States. The United States recently signed an agreement with the Russian Federation that would allow pork into Russia either after being tested for trichinae or frozen. Before now, Russia required both in order to be permitted into the country. Additionally, Brazil has historically been Russia's largest supplier of pork. However, outbreaks of foot-and-mouth disease in the latter part of 2005 hampered Brazil's ability to supply that market. Thus, other exporters, including the United States, are looking to capitalize on this opportunity to gain market share in the Russian pork market.

The voluntary certification program could potentially lead to increased exports to countries that require trichinae testing, such as the European Union. The U.S. Meat Export Federation (USMEF) believes U.S. exports to the EU would increase with the certification of new EU-approved plants and reduction in costs associated with trichinae testing. The weak dollar will also help the cause of U.S. exports. Increases in exports may not be immediate since there are currently only three EU-approved plants that are not able to fill the U.S. quota. Furthermore, the USMEF sees a potential for growth in the processed pork products market, i.e., fully cooked bacon, rather than the fresh, chilled, and frozen sector.

Currently, domestic exporters face a duty free quota of 45,000 metric tons of pork to the EU. In 2005, the United States sent approximately 6,600 metric tons of pork to the EU, which accounted for 0.7 percent of total U.S. exports. If exports to the EU were to increase by 16,000 metric tons over those reported in 2005 as expected by the National Pork Producers Council (NPPC), the EU share of U.S. exports would increase to approximately 2.5 percent. Additionally, the NPPC estimates that an increase of this magnitude would increase the value of exports by $60 million. This represents a threefold increase in the 2005 value of exports to the EU, or a 3.4 percent share of the total $2.3 billion pork export market. However, based on historical unit values for U.S. exports of pork to the EU and the world and the estimated increase in exports to the EU, the value increase predicted by the NPPC appears to be overly optimistic. Additionally, based on the expert opinion of pork analysts at USDA's Economic Research Service, it is unlikely that the voluntary certification program would change the European Union's mix of pork imports.

Testing costs under the voluntary certification program outweigh the costs of testing and freezing under the current regime. This is a result of the fact that the United States does not export large amounts of pork to countries having mandatory testing and freezing requirements. In fact, the average costs of testing and freezing per pig slaughtered are $0.02,[4] compared to $0.15 in the lowest cost scenario under the voluntary certification program. This cost comparison assumes the same slaughter numbers in both cases, and a 50 percent participation rate in the trichinae certification program. However, there may be certain producers that would benefit since APHIS is not able to look at each producer individually and must average results across all producers. APHIS welcomes any comments the public may have on the potential cost savings related to testing and freezing.

Cost-Benefit Summary

As discussed, producers, slaughter facilities, and accredited veterinarians would be subject to certain costs if they chose to participate in the trichinae certification program. Producers would likely incur added expenses to ensure that their sites meet good production practices. Similarly, slaughter facilities that choose to receive certified swine for processing also would likely incur additional costs in following program requirements, including the testing of certified swine processed at the facility in order to verify that the good production practices at the production level are adequate. Accredited veterinarians who wish to perform site audits would have to pay the cost of the training that would be necessary before performing this service for producers. The program itself would not impose additional costs on U.S. consumers, although some slaughter facilities may pass on a portion of their costs to consumers.

As indicated in the CEAH analysis, a voluntary certification program involving periodic testing at slaughter would be less expensive than a program that would involve mandatory national testing. Also, because the program is voluntary, producers who judge the costs to exceed the benefits for their individual operation could opt not to participate in the program.

We expect that costs incurred by producers, slaughter facilities, and accredited veterinarians in choosing to participate in the voluntary program would be justified in the long term by the program's export and food safety benefits. Producers and slaughter facilities should benefit from increased export opportunities that develop as a result of the increased availability of certified pork products, while accredited veterinarians participating in

[4] Testing costs are derived from the 1998 CEAH study and have been adjusted for inflation. Freezing costs were obtained from Dave Pyburn, the APHIS National Trichinae Coordinator.

the program would have a potential source of additional income.

Alternatives to the Proposed Rule

In considering alternatives to the proposed rule, we looked to the findings of the CEAH analysis of Trichinae Certification Program alternatives. The CEAH analysis compared the costs of two alternative methods for achieving Trichinae Certification Program status in U.S. swine: An evolving on-farm certification program (*i.e.*, voluntary program) that involves periodic testing at the slaughter facility versus a national carcass testing program by the pooled sample digestion method (*i.e.*, mandatory program). Part I of the CEAH analysis describes inputs, assumptions, and projected costs for an evolving on-farm certification alternative. Part II describes inputs, assumptions, and projected costs for a national carcass testing program using the digestion method.

Bottom-line results of this analysis are expressed as average annual cost per pig over 5 years. It is important to note that where possible, the data in the CEAH study have been updated through 2002 in order to obtain better estimates of the cost of a voluntary certification program versus a mandatory program. Where recent data were not available, data from the 1998 study was used and adjusted for inflation in years 2 through 5. Although startup and maintenance costs for on-farm certification were averaged over 5 years, actual spending by producers may be higher in the first year and lower in years 2 through 5 of each 5-year period.

In the CEAH analysis, one component of proposed on-farm certification is periodic ELISA testing at slaughter. Projected costs for on-farm certification were calculated in Part I under options in which (1) large and medium slaughter facilities do required ELISA testing monthly and (2) large and medium slaughter facilities do ELISA testing quarterly. It was assumed that small slaughter facilities could only accomplish the required ELISA testing quarterly.

Voluntary Certification Program

In projecting costs for on-farm certification using ELISA testing, the most influential variables were the percentage of U.S. producers that would incur zero, minimal, or moderate costs to establish and maintain good production practices (GPP) sufficient for on-farm certification, and how much these costs would be. Regarding the percentages of sites that would incur costs, it was necessary to consider a range of scenarios because data, experiences, and perceptions varied significantly. The three GPP scenarios appear in table 3 below. Regarding the dollar amounts of those costs, minimal startup and maintenance costs were estimated to be $500 over 5 years, and moderate costs to be $2,500 over 5 years.

TABLE 3.—AVERAGE ANNUAL COST PER PIG UNDER ON-FARM CERTIFICATION

Percentage of sites that would incur no additional costs, minimal GPP costs, or moderate GPP costs	Average annual cost per pig over 5 years
(a) Based on monthly ELISA testing at large/medium facilities:	
Scenario 1: 90, 5, 5	$0.148
Scenario 2: 36, 32, 32	0.225
Scenario 3: 4, 48, 48	0.271
(b) Based on quarterly ELISA testing at large/medium facilities:	
Scenario 1: 90, 5, 5	0.142
Scenario 2: 36, 32, 32	0.219
Scenario 3: 4, 48, 48	0.265

Mandatory Certification Program

The alternative program, national carcass testing by the digestion method as described in Part II of the CEAH analysis, would entail testing every carcass at slaughter. Under this option, USDA would require swine producers to participate in a trichinae certification program. The CEAH analysis assumes that 95 percent of all sites would be certified under a mandatory program. Sites that are not certified would have to have their swine undergo testing by the digestion method at slaughter. The producers of these non-certified animals would assume the cost of testing.

It is assumed that larger facilities would use their own laboratories for testing, and smaller facilities would send their samples to independent laboratories for testing. All laboratories would be monitored by AMS. Average annual cost per pig under national carcass testing by the digestion method was calculated to be $0.854, which significantly exceeded the highest cost scenario for an on-farm certification program.

Would the additional benefits of a mandatory program outweigh the costs? The CEAH analysis shows that a voluntary certification program involving periodic testing at slaughter is less expensive than under a national carcass testing program using the digestion method. While there are no cost estimates for producers who choose not to participate in a voluntary program, it is reasonable to assume that they choose not to participate based on some benefit-cost calculation, either formal or informal (i.e., costs of participating outweigh the benefits). The CEAH analysis assumes that most of the sites that would not participate in a voluntary program would involve producers with fewer than 100 head of swine. These producers would qualify as small businesses under the Small Business Administration (SBA) criteria, under which producers with not more than $750,000 in annual receipts are considered small businesses. Imposing a mandatory certification program could place an undue burden on swine producers considered to be small businesses.

Maintain Status Quo

Under this option, USDA would not establish a voluntary trichinae certification program. Producers and consumers would forgo benefits associated with the program and any potential benefits from increased exports and improved food safety would not be realized. Producers exporting to countries that monitor for *Trichinella spiralis* in pork would have to continue to test individual animals. The savings that could be realized from a voluntary certification program that would require testing only a sample of animals would not be captured.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed and

final rules on small business, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that describes expected impacts of a proposed rule on small entities. Section 603(b) of the Act specifies that an IRFA shall contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Reasons for the Action

APHIS is proposing a voluntary trichinae certification program. Currently, any pork going into the European Union and Russia, along with a few other countries, must be tested and found free of *Trichinella spiralis*. Additionally, the meat must be frozen before shipment. Under the proposed voluntary program, producers could choose to certify a production site rather than undergo testing of each carcass at the slaughter facility that is destined for certain markets.

Due to favorable changes in Europe regarding the certification of slaughter facilities in the United States, industry participants feel a certification program like the one proposed here could help domestic producers obtain a larger share of the EU market, as well as open that market to the exportation of fresh chilled, rather than frozen, products. Additional market forces, combined with the effects of this voluntary program, may also open the Russian market to additional imports of U.S. pork.

Objectives and Legal Basis

The objective of the rule is to give producers the ability to certify a production site rather than testing each individual carcass destined for markets that require trichinae testing, specifically the EU and Russia. The certification program presented here would be strictly voluntary, thus APHIS would not require producers to undergo certification. The program is based on APHIS' authority under the Animal Health Protection Act.

Small Entities That May Be Affected

The proposed rule, if implemented, would have potential implications for swine producers and slaughter facilities both in terms of the costs they might incur to satisfy program requirements and in terms of the benefits associated with any increase in fresh pork sales as a result of the program's establishment. For both producers and slaughter facilities, the majority of establishments that we expect to take part in the program are small entities (not more than $750,000 in annual receipts for producers and 500 employees for slaughter facilities). Over 80 percent of U.S. swine producers and 95 percent of slaughter facilities are small businesses according to these SBA guidelines.

Participation of producers in the trichinae certification program would be voluntary. Small operations could decide not to participate in the program if they believe the costs of maintaining certified status outweigh the benefits of producing certified swine. Slaughter facilities would also face this decision. Because participation is voluntary, the proposed rule is not expected to have an adverse impact on small businesses.

Reporting, Recordkeeping, and Other Compliance Requirements

Producers would have to pay for a site audit by the accredited veterinarian, program fees for certification from APHIS, and possibly testing. Slaughter facilities that purchase swine from certified production sites would be required to carry out certain functions relating to verification, segregation, testing, and recordkeeping of certified swine under its control. Thus, the slaughter facility would have to keep records of the number of animals slaughtered from certified sites. They would also have to make sure that certified and non-certified animals were kept separate throughout the whole process. These facilities would also be responsible for keeping records related to testing. In the end, however, it is a voluntary program, so participants only take on this burden if they feel the program would benefit them.

Duplicating, Overlapping, or Conflicting Federal Rules

APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Economic Impact on Small Entities

The Agency does not expect the proposed rule to result in significant economic impacts on small entities, and has therefore not set forth alternatives to minimize such impacts. Participation of producers in the Trichinae Certification Program would be voluntary. Small operations could opt to not join or withdraw from the program if they found the costs of maintaining certified status outweigh the benefits of producing certified swine. Because it is voluntary, the proposed rule is not expected to have an adverse impact on small businesses.

Summary of Initial Regulatory Flexibility Analysis

The proposed rule would establish a voluntary trichinae certification program. Producers who wish to participate would have to pay for an audit by an accredited veterinarian of their site. Additionally, they may incur the costs of carcass testing if the slaughter facility conducting the testing passes that cost to the producer. However, since this is a purely voluntary program, producers may opt not to incur any of these expenses.

Individuals in the pork industry are hopeful this certification program would help domestic producers gain market share in countries that require trichinae testing, particularly the EU and Russia. The EU is reducing the certification requirements for slaughter facilities, and industry participants feel the voluntary certification program would substitute for the mandatory testing of all carcasses destined for that market. The benefits of the rule lie in its potential to open markets requiring mandatory trichinae testing to additional domestic product. However, the extent to which these markets would open is unknown. Costs under the certification program appear to be higher than current testing costs due to the fact that a small amount of product is currently sent to the EU and Russia. However, certain producers may find it to their advantage to participate given their particular situation. Since the program is voluntary and does not impose any costs on producers not wishing to participate, small entities would not be negatively impacted by this proposed rule. In the end,

producers will participate in the program if they feel the benefits garnered from the certification program will outweigh the costs they incur.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The assessment provides a basis for the conclusion that the implementation of the Trichinae Certification Program, as provided for in the proposed rule, would preclude any potential adverse effects on endangered and threatened species and their habitats, and would not have a significant impact on the quality of the human environment.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Comments on the environmental assessment may be submitted using the methods described under **ADDRESSES**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0089. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0089, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The proposed Trichinae Certification Program is a voluntary program to certify pork as produced under good production practices that reduce, eliminate, or avoid the animal's risk of exposure to *Trichinella spiralis* infection risk factors. *Trichinella spiralis* or trichinae is a parasitic disease of warm-blooded carnivores and omnivores, including swine. Uniform program standards have been developed by organizations representing the pork industry, State animal health agencies, and USDA. These standards provide the guidelines for implementing the requirements for this voluntary program.

In this program, pork production sites would be audited by USDA trained and accredited veterinarians. During the site audit, the veterinarian would observe and collect information about the site, including swine sources, feed sources, rodent and wildlife control, and facility hygiene. This information would be collected on USDA-approved official program audit forms. APHIS would review the information obtained from the site audit to ensure that the required program standards relating to good production practices are in place and being maintained at the site in order to reduce, eliminate, or avoid the risk of exposure of swine to trichinae. APHIS would maintain a database containing records for each pork production site participating in the program. Listings of certified production sites by TIN and program status would be posted on the Trichinae Certification Program Web site at *http://www.aphis.usda.gov/vs/trichinae* and would be accessible to APHIS personnel, as well as slaughter facility representatives whose facilities handle certified swine.

In most instances, the information relating to a pork production site's adherence to required good production practices would be collected during the audit. Completed forms would be submitted to the local APHIS area office. Site suitability for program enrollment or certification would be determined by the local APHIS area office. Program data would be entered locally. National summary data would be available to APHIS personnel involved in administering the program.

Producers choosing to participate in the program would be subject to certain recordkeeping requirements that evidence their adherence to all of the required good production practices. Producers would have to maintain the following records: Animal disposal plan, animal movement record, feed mill quality assurance affidavit (if applicable), rodent control logbook, and waste feeding logbook (if applicable).

Slaughter facilities handling certified swine also would be subject to certain recordkeeping requirements as to the number of certified swine processed, the source of the certified swine, and test results relating to process-verification testing. Such slaughter facilities also would be required to have documented procedures on how certified swine under its control, and the edible pork products derived from these animals, would remain segregated from swine and pork from noncertified sources.

Approved laboratories that perform process-verification testing under the Trichinae Certification Program would be required to maintain written procedures that pertain to the performance of process-verification testing.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.3842102 hours per response.

Respondents: Auditors, herd owners, slaughter facilities, and approved laboratories.

Estimated annual number of respondents: 54,500.

Estimated annual number of responses per respondent: 2.992532.

Estimated annual number of responses: 163,093.

Estimated total annual burden on respondents: 62,662 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 149

Animal diseases, Hogs, Laboratories, Meat and meat products, Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 160

Veterinarians.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we propose to amend title 9 CFR chapter I as follows:

SUBCHAPTER G—LIVESTOCK IMPROVEMENT

1. In subchapter G, the subchapter heading would be revised to read as set forth above.

2. In subchapter G, a new part 149 would be added to read as follows:

PART 149—VOLUNTARY TRICHINAE CERTIFICATION PROGRAM

Sec.

Authority: 7 U.S.C. 8301–8317; 7 U.S.C. 1622; 7 CFR 2.22, 2.80, and 371.4.

§ 149.0 Purpose and Scope.

The Trichinae Certification Program described in this part is intended to enhance the ability of swine producers, as well as slaughter facilities and other persons that handle or process swine from pork production sites that have been certified under the program, to export fresh pork and pork products to overseas markets.

§ 149.1 Definitions.

Accredited veterinarian. A veterinarian approved by the APHIS Administrator in accordance with part 161 of this chapter to perform functions specified in subchapters B, C, D, and G of this chapter.

Agricultural Marketing Service (AMS). The Agricultural Marketing Service of the United States Department of Agriculture.

AMS Administrator. The Administrator, Agricultural Marketing Service, or any person authorized to act for the AMS Administrator.

AMS representative. Any individual employed by or acting as an agent on behalf of the Agricultural Marketing Service who is authorized by the AMS Administrator to perform services required by this part.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal disposal plan. A written document that describes methods for the removal and disposal of dead swine or swine remains from a pork production site.

Animal movement record. A written record of the movement of swine into or from a pork production site.

APHIS Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the APHIS Administrator.

APHIS representative. Any individual employed by or acting as an agent on behalf of the Animal and Plant Health Inspection Service who is authorized by the APHIS Administrator to perform the services required by this part.

Approved laboratory. A non-Federal laboratory approved by the Agricultural Marketing Service and recognized by the APHIS Administrator or FSIS Administrator for performing validated tests to determine the presence of trichinae infection in reference to the Trichinae Certification Program.

Audit. An inspection process, as provided in this part, that generates a written record documenting a pork production site's adherence to the required good production practices.

Auditor. A qualified accredited veterinarian (QAV) or a qualified veterinary medical officer (QVMO) who is trained and authorized by APHIS to perform auditing activities under the Trichinae Certification Program.

Certification (certified). A designation given by the APHIS Administrator to a pork production site for compliance with good production practices and other program requirements of the Trichinae Certification as provided in this part.

Certified pork. Pork products originating from certified swine from a certified production site with identity of such animals or carcasses maintained throughout receiving, handling, and processing.[1]

Certified production site. A pork production site that has attained a program status of Stage II or higher, based on adherence to good production practices and other program requirements as provided in this part.

Certified swine. Swine produced under the Trichinae Certification Program on a certified production site.

Decertification (decertified). Removal of the certified status of a production site by the APHIS Administrator when it has been determined that the criteria of the Trichinae Certification Program are not being met or maintained.

Enzyme-linked immunosorbent assay (ELISA). A method of testing swine for the presence of trichinae infection by looking for antibodies to *Trichinella spiralis* in the sera, plasma, whole blood, tissue fluid, or meat juice of swine.

EPA. The United States Environmental Protection Agency.

Feed mill quality assurance affidavit. A written statement signed by the feed mill representative and the producer that documents the quality and safety of feed or feed ingredients delivered from the feed mill to the pork production site.

Food Safety and Inspection Service (FSIS). The Food Safety and Inspection Service of the United States Department of Agriculture.

FSIS Administrator. The Administrator, Food Safety and

[1] The labeling of all certified pork or pork products leaving a slaughter or processing facility must comply with 9 CFR 317.4 and all other applicable FSIS labeling regulations.

Inspection Service, or any person authorized to act for the Administrator.

FSIS program employee. Any individual employed by or acting as an agent on behalf of the Food Safety and Inspection Service who is authorized by the FSIS Administrator to perform the services required by this part.

Good manufacturing practices. Feed manufacturing practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*.

Good production practices. Pork production management practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis.*

Harborage. Any object, debris, clutter, or area that could serve as shelter or refuge for rodents or wildlife.

Laboratory approval audit. An audit performed by AMS representatives to determine if a laboratory meets minimum requirements for approval, as established by AMS, for performing validated tests under this part.

National Trichinae Certified Herd. All swine raised on certified production sites in the United States.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pest control operator. A person trained and State-licensed in the control of pests and vermin (particularly rodents).

Pooled sample digestion method (digestion method). A method of testing swine for trichinae infection by identifying the presence of *Trichinella spiralis* from a sample of the animal's muscle tissue.

Pork production site (site). A geographically definable area that includes pork production facilities and ancillary structures under common ownership or management systems and the surrounding space within a 100-foot perimeter of the swine housing and feeding areas.

Positive test result. Outcome of a validated test indicating the presence of *Trichinella spiralis*.

Process-verification testing. Testing of a statistically valid sample of swine belonging to the National Trichinae Certified Herd at the time of slaughter using a validated test to verify that the adherence to good manufacturing practices and good production practices is resulting in the absence of *Trichinella spiralis* infection in swine from that herd.

Producer. An individual or entity that owns or controls the production or management of swine.

Qualified accredited veterinarian (QAV). An accredited veterinarian who has been granted an accreditation specialization by the APHIS Administrator pursuant to § 161.5 of this chapter based on completion of an APHIS-approved orientation or training program in good production practices in swine management, and who is authorized by the APHIS Administrator to perform site audits and other specified program services required by this part.

Qualified veterinary medical officer (QVMO). A VMO of the State or Federal Government who is trained in good production practices and is authorized by the APHIS Administrator to perform site audits, spot audits, and other specified program services required by this part.

Rodent control logbook. A written record that documents a rodent control program for a pork production site.

Site audit. An audit, performed by a QAV or a QVMO, to determine the trichinae risk factor status of a pork production site based on the site's adherence to all of the required good production practices that reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*.

Slaughter facility. A slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act that receives certified swine under the Trichinae Certification Program.

Slaughter facility representative. Any individual employed by, or acting as an agent on behalf of, a slaughter facility who is authorized by the slaughter facility to perform the specified program services required by this part.

Spot audit. An audit of a certified pork production site performed by a QVMO to ensure program integrity and consistency.

Stage I enrolled. Preliminary program status of a pork production site attained when the APHIS Administrator approves the outcome of an initial site audit.

Stage II certified. Program status attained upon APHIS approval of a site audit of a Stage I enrolled site.

Stage III certified. Program status attained upon APHIS approval of a site audit of a Stage II certified site and maintained upon APHIS approval of subsequent site audits for renewal of Stage III certified status.

Sterile zone. An open area immediately adjacent to and surrounding those building(s) used to house and feed swine that serves as both a buffer and detection zone for rodent and wildlife activity.

Temporary withdrawal. The voluntary withdrawal of a certified production site from the Trichinae Certification Program at the request of the producer for a period not to exceed 180 days.

Trichinae. A generic term that refers to *Trichinella spiralis*.

Trichinae Certification Program (program). A voluntary pre-harvest pork safety program in which APHIS certifies pork production sites that follow all of the required good production practices that reduce, eliminate, or avoid the risk of exposure of swine from their sites to *Trichinella spiralis*.

Trichinae Identification Number (TIN). A number assigned to a pork production site by the APHIS Administrator.

Trichinella spiralis. A parasitic nematode (roundworm) capable of infecting many warm-blooded carnivores and omnivores, including swine.

USDA. The United States Department of Agriculture.

Validated test. An analytical method licensed by APHIS or accepted by AMS for the diagnosis of *Trichinella spiralis* in swine.

Veterinary medical officer (VMO). A veterinarian employed by the State or Federal Government who is authorized to perform official animal health activities on their behalf.

Waste feeding logbook. A written record that documents the presence of good production practices with respect to the feeding of meat-containing waste to swine and compliance with applicable State and Federal food waste feeding laws and regulations.

§ 149.2 Program participation.

A producer's initial enrollment and continued participation in the trichinae certification program requires that the producer adhere to all of the good production practices, as confirmed by periodic site audits, and comply with other recordkeeping and program requirements provided in this part. Pork production sites accepted into the program by APHIS will participate under one of the following three program stages:

(a) *Stage I enrolled status.* (1) Stage I enrolled status signifies that the site has met good production practices and other recordkeeping and program requirements provided in this part.

(2) Swine from a Stage I enrolled site cannot be identified as products from a certified production site.

(3) A Stage I enrolled site must complete a site audit for Stage II certified status in accordance with § 149.3(d). Under § 149.3(d), the site audit must be performed no sooner than 150 days from the date the site was awarded Stage I enrolled status, and must be completed, with the audit form

and payment submitted to APHIS, no later than 210 days from the date the site was awarded Stage I enrolled status.

(4) A Stage I enrolled site that is found not to be adhering to one or more good production practices as a result of a site audit or spot audit, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment for consideration as a Stage II certified site, will lose its status as a Stage I enrolled site.

(b) *Stage II certified status.* (1) Stage II certified status signifies that the site is adhering to all of the required good production practices and other recordkeeping and program requirements provided in this part.

(2) An APHIS-issued certificate or letter indicating the site's status as a Stage II certified site must be filed at the site and be readily available for inspection.

(3) Swine from a Stage II certified site may be identified as certified product from a certified production site.

(4) A Stage II certified site must complete a site audit for Stage III certified status in accordance with § 149.3(e). Under § 149.3(e), the site audit must be performed no sooner than 240 days from the date the site was awarded Stage II certified status, and must be completed, with the audit form and payment submitted to APHIS, no later than 300 days from the date the site was awarded Stage II certified status.

(5) A Stage II certified site that is found not to be adhering to one or more good production practices as a result of a site audit or spot audit, or that fails to meet the Stage III site audit requirements of § 149.3(e) within the prescribed timetable, will be decertified by APHIS as provided in paragraph (e) of this section. During the time a site is decertified, swine from that site cannot be identified as product from a certified production site.

(c) *Stage III certified status.* (1) Stage III certified status signifies that the site is adhering to all of the required good production practices and other recordkeeping and program requirements provided in this part.

(2) An APHIS-issued certificate or letter indicating the site's status as a Stage III certified site must be filed at the site and be readily available for inspection.

(3) Swine from a Stage III certified site may be identified as certified products from a certified production site.

(4) A Stage III certified site that is found not to be adhering to one or more good production practices as a result of a site audit or spot audit, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment to determine its continued participation as a Stage III certified site, will be decertified by APHIS as provided in paragraph (e) of this section. During the time a site is decertified, swine from that site cannot be identified as product from a certified production site.

(d) *Change of ownership.* (1) *Stage I enrolled site.* If there is a change in ownership in a Stage I enrolled site, and the new ownership wishes to remain in the program, then the Stage I enrolled site will remain on the same timetable as under the previous ownership for purposes of completing a site audit for Stage II certified status. No additional site audit is necessary as a result of the change of ownership of the site.

(2) *Stage II or Stage III certified sites.* Within 60 days of a change in ownership of a Stage II or Stage III certified site, a site audit must be performed in order for the site to maintain its certified status. It is the new ownership's responsibility that a site audit be performed within 60 days of the change in ownership, otherwise the site will be decertified. If the site audit is satisfactory, then the Stage II or Stage III certified site will continue in the program only as a Stage II certified site. A new program anniversary date for that site will be established based on the date the site was audited to continue in the program as a Stage II certified site. If the results of the site audit do not meet program requirements, as determined by APHIS, the Stage II or Stage III site will be decertified. Once a site is decertified by APHIS, either because the new ownership fails to arrange for a site audit to be performed within the allotted 60-day time period, or because the site is found not to meet program requirements, a producer wishing to participate in the program again must follow the procedures for requesting an initial audit for Stage I enrolled status. If a decertified site is reenrolled after a successful Stage I site audit, a new program anniversary date for that site will be established based on the date of reenrollment.

(e) *Site decertification and program withdrawal.* (1) *Decertification by APHIS.*

(i) A Stage II or Stage III certified site that is found not to be adhering to one or more good production practices as a result of a site audit or spot audit, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment to continue participation in the program, will be decertified by APHIS.

(ii) During the time a site is decertified, swine from such sites cannot be identified as certified product from a certified production site.

(iii) Once a site is decertified by APHIS, a producer wishing to participate in the program again must follow the procedures for requesting a site audit for Stage I enrolled status. If a decertified site is reenrolled after a successful Stage I site audit, a new program anniversary date for that site will be established based on the date of recertification. If a decertified site is recertified after a successful Stage II site audit, a new program anniversary date for that site will be established based on the date of recertification.

(2) *Temporary withdrawal by producer.* (i) A producer may request that one or more certified production sites be temporarily withdrawn. A producer's request must be made in writing and is subject to the APHIS Administrator's approval.

(ii) Each certified production site can be temporarily withdrawn no more than once every 2 years for a period not to exceed 180 days.

(iii) During the time a site is temporarily withdrawn:

(A) Swine from such sites cannot be identified as certified product from a certified production site; and

(B) The producer must continue to adhere to all good production practices and other recordkeeping and program requirements provided in this part, unless specifically waived by the Administrator, including documentation in the animal movement record of the arrival and departure of all swine from the site, as well as whether the swine arriving at the site are from certified or noncertified sources.

(iv) Before being reinstated as a certified production site, the temporarily withdrawn site must pass a site audit to indicate that it is adhering to all good production practices (including any practices previously waived by the Administrator) as follows:

(A) The site audit must be performed while the site is still under temporary withdrawal status. If swine 5 weeks of age or older originating from noncertified sources are received at the site during the time of withdrawal, then the site audit for reinstatement must be performed within 30 days of the date the last swine from noncertified sources was removed from the site, but no later than 180 days from the date the site was granted temporary withdrawal status.

(B) If the results of the site audit are satisfactory and it is determined that the site is adhering to good production practices and other program

requirements provided in this part, then the withdrawn site will be reinstated as a Stage II certified site. The timetable for performing future site audits for attaining and renewing Stage III certified status will be based on the date the site was reinstated as a Stage II certified site.

(C) If the results of the site audit are not satisfactory due to the producer's failure to adhere to one or more good production practices, or, if the period of temporary withdrawal has exceeded 180 days, then the site will be decertified by APHIS. Once the site is decertified by APHIS, the producer must follow the procedures for requesting an initial site audit for Stage I enrolled status in order for the site to be reenrolled in the program. If a site is decertified by APHIS and then reenrolled after a successful Stage I site audit, a new program anniversary date for that site will be established based on the date of enrollment.

(3) *Program withdrawal.* (i) If a producer decides to withdraw one or more of pork production sites from the program, then it is the producer's responsibility to notify the APHIS Administrator in writing of this intent. When this is done, the site will be removed from the program.

(ii) If at a later date the producer requests that a site be reinstated in the program, then the producer must follow the procedures for requesting an initial audit for Stage I enrolled status. If a withdrawn site is reenrolled after a successful Stage I site audit, then a new program anniversary date for that site will be established based on the date of reenrollment.

(f) *Request for review.* If there is a conflict as to any material fact relating to the results of a site audit, spot audit, or other determination affecting a producer's program status or ability to participate in the program, the producer may submit a written request for review to the Administrator. The producer must include in the request the reasons, including any supporting documentation, why the audit result or other determination should be different than the result or determination made by the Administrator. The initial audit result or other determination will remain in force pending the completion of the Administrator's review. The decision by the Administrator upon reviewing the producer's written request will be final.

§ 149.3 Site audit.

(a) *General.* (1) The producer must contact a QAV to request a site audit. A list of available QAVs may be obtained by accessing the Trichinae Certification Program Web site on the Internet at *http://www.aphis.usda.gov/vs/trichinae*, or by contacting the APHIS area office.[2] If a QAV is not available to perform a site audit, the producer may then contact the APHIS area office to request that a QVMO perform the site audit. The site audit is to be arranged at a mutually agreed-upon time.

(2) The producer or the producer's designated representative will accompany the auditor during the site audit.

(3) During the site audit, the auditor will record whether the producer is adhering to all of the required good production practices at the site, as provided in paragraph (b) of this section, in order to reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis*.

(4) The auditor will use APHIS-approved audit forms in performing the site audit. After the auditor has completed all sections of the audit form, the producer or the producer's designated representative must sign the audit form attesting to the accuracy of the information obtained during the site audit and to evidence his or her intent to continue adhering to the good production practices and other program requirements, as provided in this part. The auditor also must sign the audit form at this time.

(5) The producer is responsible for the cost of each site audit performed at the pork production site. If a QAV performs the site audit, then the producer will pay the QAV directly at a mutually agreed-upon time and rate. If a QVMO performs the site audit, then the producer will pay the QVMO at the time the site audit is performed in accordance with the rate and other conditions set by the QVMO's governmental employer. If an APHIS-employed QVMO performs the site audit, then the producer will pay APHIS by certified check or U.S. money order for this service at a rate determined in accordance with § 149.8.

(6) In addition to the cost of the site audit, the producer is also responsible for paying a separate program fee in an amount specified in § 149.8 to cover APHIS' administrative costs in processing the audit and operating the program. This program fee, payable to APHIS by certified check or U.S. money order, must be remitted to the auditor at the time each site audit is performed.

(7) The auditor will submit the completed audit form, program fee, and payment for the services of an APHIS-employed QVMO, if applicable, to the nearest APHIS area office. If a QAV performs the site audit, the producer will be responsible for ensuring that the QAV submits the completed audit form and program fee to APHIS in a timely manner.

(8) Upon receipt of the completed audit form and payment, APHIS will determine the initial enrollment or certification status for the site based on an evaluation of the site audit. APHIS will provide the producer with written notification of the audit results. Pork production sites that meet all good production practices as provided in paragraph (b) of this section, as well as other program requirements provided in this part, will be issued program status at the appropriate program stage.

(9) If the site audit shows that the site does not meet all good production practices or other program requirements, APHIS will provide the producer with written notification that includes documentation of the deficiencies that prevented the site from being conferred program status.

(b) *Good production practices.* In a site audit, the auditor will determine whether all of the required good production practices are being carried out at the site to reduce, eliminate, or avoid the risk of exposure of swine to *Trichinella spiralis* as follows:

(1) The movement of all non-breeding swine 5 weeks of age or older into or from the pork production site must be documented in an animal movement record, as provided in § 149.7, that ensures that all such swine moved into or from the site can be subsequently traced back to that site, or to any previous site (if applicable).

(2) All non-breeding swine entering a site must have originated from another certified production site, except that non-breeding swine less than 5 weeks of age may have originated from either a certified or noncertified production site. The animal movement record must include the TIN of the certified production site from which the swine originated. If the swine are less than 5 weeks of age and come from a noncertified site, then the animal movement record must provide the name and full address of the noncertified site where the swine originated.

(3) Feed or feed ingredients from offsite sources that are used at the site must meet good manufacturing practices or other quality assurance standards recognized by the feed industry. The adherence to good manufacturing practices or other quality assurance standards must be documented in a feed

[2] Telephone numbers for APHIS area offices can be found in local telephone books or on the Internet at *http://www.aphis.usda.gov/vs/area_offices.htm*.

mill quality assurance affidavit, as provided in § 149.7.

(4) Swine housing and feeding areas, feed preparation and storage areas, and office areas and connecting hallways at the site must be inspected regularly and found free of fresh signs rodent and wildlife activity. Any movable harborage (exterior or interior) on the site that is not necessary to the day-to-day operation of the site must be removed. Harborage that cannot be removed or is movable but necessary to the day-to-day operation of the site (*e.g.*, bales of hay, etc.) must be checked for signs of rodent or wildlife activity (*e.g.* fresh droppings, tracks, signs of gnawing or burrowing). In addition, domesticated animals, including pets such as dogs and cats, must be excluded from the swine housing and feeding areas and feed preparation and storage areas at the site (evidence of rodent activity or rodent infestation consists of fresh rodent droppings, fresh gnawing marks, new structural damage, rodent urine, rodent blood, rodent smear marks (body oil), rodent tracks, or recent burrowing or burrow use. Evidence of wildlife activity consists of wildlife feces, footprints, fur, or hair observed in or near the stored feed or feed ingredients, dead or live wildlife observed in or near the stored feed or feed ingredients, or wildlife burrows or nests observed in or near the stored feed or feed ingredients). Exterior rodent bait stations and/or traps must be placed around the perimeter of those building(s) housing the swine, as well as around the perimeter of outdoor swine feeding areas. Exterior rodent bait stations and/or traps also must be placed around areas of potential rodent entry into building(s) used to house and feed swine (i.e., doorways, vent openings, loading chutes, cool cells, etc.). Interior rodent bait stations and/or traps must be placed near high-risk rodent zones such as entryways, hallways, office areas, swine load out areas, vents, cool cells, storage areas, utility rooms, cabinets, locker rooms, bathrooms, and break rooms, and systematically maintained. Interior rodent bait stations and/or traps must be placed so that swine will not come in contact with the bait or trap. Rodent bait stations and/or traps also must be placed near exterior or interior harborage on the site that cannot be removed or that is movable but necessary to the day-to-day operation of the site. In all instances, rodent bait stations must be intact, systematically maintained, and contain fresh bait that consists of an EPA-registered rodenticide formulation that is applied according to its label. In addition, a sterile zone must be maintained around the perimeter of those building(s) used to house and feed swine. The sterile zone must be devoid of any harborage or feed or water sources that could attract rodents or wildlife, but must contain rodent bait stations and/or rodent traps. The sterile zone also must be devoid of any vegetation unless it is decorative vegetation that is well maintained (i.e., residential height grass, flowers, shrubs, or trees). A sterile zone with decorative vegetation will require increased rodent control measures. The producer must provide documentation of rodent control practices by maintaining at the site an up-to-date rodent control logbook with a site diagram and other recordkeeping evidencing implementation of rodent control measures, which can include documents provided by a pest control operator, as provided in § 149.7.

(5) Feed or feed ingredients stored at the site must be prepared, maintained, and handled in a manner that protects the feed or feed ingredients from possible exposure to or contamination by rodents or wildlife. Any movable harborage in the immediate vicinity of feed production and feed storage areas that is not necessary to the day-to-day operation of the site must be removed. Harborage that cannot be removed or harborage that is movable but necessary to the day-to-day operation of the site (e.g., bales of hay, etc.) must be checked for signs of rodent or wildlife activity. Rodent bait stations and/or traps must be placed around (and in, if applicable) all feed preparation and storage areas, as well near any harborage in the vicinity that cannot be removed or that is movable but necessary to the day-to-day operation of the site. Rodent bait stations must be intact, systematically maintained, and contain fresh bait that consists of an EPA-registered rodenticide formulation that is applied according to its label. In addition, feed or feed ingredients that are stored in paper bags must be elevated off the floor and be a sufficient distance away from the walls to allow for inspection, baiting, and/or trapping. The rodent control logbook, as provided in § 149.7, must document that adequate rodent control procedures have been implemented in the feed production and feed storage areas.

(6) Swine must not have access to wildlife harborage or dead or live wildlife at the site. This harborage limitation includes wood or wooded lots and other natural wildlife access areas. Dead or live wildlife must not be intentionally fed to swine.

(7) If meat-containing waste is fed to swine at the site, then the producer must hold a license or permit that authorizes the feeding of such waste to swine. Cooking times and temperatures of meat-containing waste must be consistent with applicable State and Federal laws and regulations. In addition, up-to-date records of waste feeding and cooking practices, in the form of a waste feeding logbook must be maintained at the site, as provided in § 149.7. Cooked food waste products that are stored prior to feeding must not be mixed or contaminated with uncooked or undercooked meat waste material. Household food waste, regardless of whether it contains meat or is cooked or undercooked, also must not be fed to swine.

(8) Procedures must be in place and carried out for the prompt removal and proper disposal of dead swine or swine remains found in pens in order to eliminate the opportunity for cannibalism, as well as to prevent the attraction of rodents or wildlife. Such procedures must be documented in the animal disposal plan, as provided in § 149.7.

(9) General hygiene and sanitation of the site must be maintained at all times to prevent the attraction of rodents and wildlife. Solid non-fecal waste (facility refuse) must be placed in covered receptacles and be regularly removed from the site. Spilled feed also must be regularly removed and properly disposed of.

(10) All records required under § 149.7 must be kept up-to-date and readily available for inspection at the site.

(c) *Initial site audit for Stage I enrolled status.* (1) Producers interested in participating in the program should request and review a pre-audit information packet prepared by APHIS that discusses the program, as well as the steps in preparing for and requesting an initial site audit.[3] When the producer and the producer's herd health personnel believe that a site meets program standards, the producer may arrange for an initial site audit, as provided in paragraph (a) of this section.

(2) Upon completion of the initial site audit and submission of the completed audit form and payment, APHIS will

[3] The pre-audit information packet may be obtained from a qualified accredited veterinarian (QAV), State or Federal animal health offices, or the National Pork Board, or by writing to: USDA, APHIS, Veterinary Services, Trichinae Certification Program, 210 Walnut St., Room 891, Des Moines, IA 50309. A pre-audit packet also may be requested electronically through the program Web site on the Internet at *http://www.aphis.usda.gov/vs/trichinae.*

review the completed audit form and make a determination within 30 days as to enrollment of the site in the program. A pork production site that is found to meet all good production practices and other program requirements in this part will be awarded Stage I enrolled status.

(d) *Site audit for Stage II certified status.* (1) A producer of a Stage I enrolled site must arrange for another site audit for Stage II certified status. The site audit must be performed no sooner than 150 days (*i.e.*, approximately 5 months) from the date the site was awarded Stage I enrolled status, and must be completed, with the audit form and payment submitted to APHIS, no later than 210 days (*i.e.*, approximately 7 months) from the date the site was awarded Stage I enrolled status.

(2) APHIS will review the completed audit form and make a determination as to Stage II certified status within 7 days of receipt of the audit form and payment. (i) A Stage I enrolled site that is found to meet all good production practices and other program requirements in this part will be awarded Stage II certified status.

(ii) A Stage I enrolled site that is found, during a site audit, not to be adhering to one or more good production practices, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment, will not be awarded Stage II certified status and will lose its program status as a Stage I enrolled site.

(e) *Site audit for Stage III certified status.* (1) A producer of a Stage II enrolled site must arrange for another site audit for Stage III certified status. The site audit must be performed no sooner than 240 days (i.e., approximately 8 months) from the date the site was awarded Stage II certified status, and must be completed, with the audit form and payment submitted to APHIS, no later than 300 days (i.e., approximately 10 months) from the date the site was awarded Stage II certified status.

(2) APHIS will review the completed audit form and make a determination as to Stage III certified status within 30 days of receipt of the audit form and payment. (i) A Stage II certified site that is found to meet all good production practices and other program requirements in this part will be awarded Stage III certified status.

(ii) A Stage II certified site that is found, during a site audit, not to be adhering to one or more good production practices, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment, will be subject to decertification by APHIS as provided in § 149.2(e).

(f) *Site audit for renewal of Stage III certified status.* (1) A producer seeking to renew a site's Stage III certified status must arrange for another site audit. The site audit must be performed no sooner than 14 months from the date the site was awarded Stage III certified status or the date that status was last renewed, and must be completed, with the audit form and payment submitted to APHIS, no later than 16 months from either the date the site was awarded Stage III certified status or the date that the status was last renewed.

(2) APHIS will review the completed audit form and make a determination as to renewing the site's Stage III certified status within 30 days of receipt of the audit form and payment. (i) A Stage III certified site that is found to meet all good production practices and other program requirements in this part will have its status Stage III certified site renewed.

(ii) A Stage III certified site that is found, during a site audit, not to be adhering to one or more good production practices, or that fails to follow the prescribed timetable for completing a site audit and submitting the completed audit form and payment, will be subject to decertification by APHIS as provided in § 149.2(e).

§ 149.4 Spot audit.

(a) In addition to regularly scheduled site audits, certified production sites will be subject to spot audits. (1) *Random spot audit.* Certified production sites will be selected by the APHIS Administrator at random for a spot audit in order to:

(i) Ensure the integrity of the audit process;

(ii) Verify that the audit process is performed in a consistent manner across the program; and

(iii) Verify that all required good production practices are being maintained between regularly scheduled site audits.

(2) *Spot audit for cause.* A certified production site may be subject to a spot audit to trace back and investigate any positive test results as a result of testing of certified swine from that site at the slaughter facility.

(b) All spot audits will be performed by a QVMO. The producer of the certified production site subject to spot audit will not be charged for the spot audit. APHIS will provide the producer with written notification of the results of the spot audit, including documentation of any deficiencies noted during the audit. If the site is found not to be adhering to one or more of the required good production practices, then the site will be subject to decertification by APHIS as provided in § 149.2(e).

§ 149.5 Offsite identification and segregation of certified swine.

Certified swine moved from a certified production site to another location, whether to another certified production site, buying station, collection point, or slaughter facility, must remain segregated from noncertified swine at all times and otherwise maintain their identity as certified swine in such a way that they could be readily traced back to the certified production site from which they came. Information relating to the identification of the certified swine must be documented in the animal movement record maintained by the producer. Failure to properly segregate or maintain the identity of certified swine from noncertified swine after leaving the certified production site will result in the loss of certified status for that shipment of swine.

§ 149.6 Slaughter facilities.

Only slaughter facilities that are under continuous inspection by the Food Safety and Inspection Service or under State inspection that the Food Safety and Inspection Service has recognized as equivalent to Federal inspection may participate in the program. To participate in the program, slaughter facilities must follow the relevant provisions of this section relating to verification, segregation, testing, and recordkeeping. Participating slaughter facilities that fail to comply with any of the applicable requirements of this section will not be allowed to continue to participate in the Trichinae Certification Program and the pork or pork products prepared by the facility will not be eligible for a certificate of export that identifies the product as meeting the standards of the Trichinae Certification Program.

(a) *Verification of certification.* A slaughter facility receiving certified swine must verify the current certification status of the pork production site from which the animals came. The current certification status may be verified by maintaining dated certification documentation on file or by accessing the Trichinae Certification Program Web site on the Internet at *http://www.aphis.usda.gov/vs/trichinae.* If the slaughter facility is unable to verify a site's certification status through documentation on file or through the program Web site, the

slaughter facility then should contact the APHIS area office in the State where the site is located.

(b) *Maintaining identity and segregation of certified swine and pork products.* For certified swine to be identified as certified pork, certified swine and edible pork products derived from certified swine must remain segregated from swine and edible pork products from noncertified sites throughout receiving, handling, and processing at the slaughter facility, as well as while awaiting shipment from the facility. The slaughter facility must maintain the identity of the certified swine or pork in a manner that allows the certified swine or pork to be traced back to the certified production site from which it came. A slaughter facility's failure to properly segregate or maintain the identity of certified swine and edible pork products derived from the certified swine will result in the loss of certified status for that shipment of swine, as well as the edible pork products derived from those animals.

(c) *Process-verification testing.* A slaughter facility processing certified swine is responsible for performing process-verification testing at its expense to determine the *Trichinella spiralis* infection status of certified swine under its control as follows:

(1) *Validated tests.* Process-verification testing must be performed by using a validated test.[4]

(2) *Laboratory approval.* Process-verification testing must be performed in an approved laboratory that has been approved for trichinae testing by the Agricultural Marketing Service (AMS).[5] The approved laboratory may be maintained and operated by the slaughter facility or by another business entity either on the premises of the slaughter facility or at another location. Laboratory staff performing process-verification testing must be accredited by AMS to perform this program function. For purposes of quality assurance, all laboratory staff approved to perform process-verification testing will receive periodic proficiency test panels from AMS that must be analyzed correctly in order to maintain their approval status.

(3) *Testing sample size and frequency.* Process-verification testing must meet the following minimum requirements relating to sample size and frequency:

(i) Slaughter facility representatives shall determine the yearly processing capacity of the slaughter facility for the next 12 months. Officials may use the processing capacity over the previous 12 months if this period is representative of a typical processing year.

(ii) Slaughter facility representatives shall estimate the percentage of swine processed that are likely to come from certified production sites considering all swine expected to be processed at the slaughter facility during the selected 12-month period. Swine that come from certified production sites are considered the eligible population to be sampled.

(iii) Slaughter facility representatives shall use the Trichinae Certification Slaughter Facility Sample Size Determination Table (see table 1) to find the number of samples to collect from the population of swine from certified production sites. If the eligible population is not listed in table 1, the next largest number will be used to determine the number of samples to collect. Select the number of samples to collect from the column that reflects a 99 percent confidence level of detecting a positive carcass in the population. The number selected from table 1 will be the total number of samples that slaughter facility representatives must collect and test per year and per month during the selected 12-month period.

TABLE 1.—TRICHINAE CERTIFICATION SLAUGHTER FACILITY SAMPLE SIZE DETERMINATION

Certified swine from certified production sites processed per slaughter facility per year	Samples to collect from the population per year at a 99 percent confidence level	Samples to collect from the population per month at a 99 percent confidence level
1,000	1,000	84
5,000	4,996	417
25,000	18,938	1,578
100,000	29,828	2,486
200,000	32,462	2,705
400,000	33,899	2,825
1,000,000	34,802	2,900
2,000,000	35,110	2,926
4,000,000	35,266	2,939
5,000,000	35,297	2,942

(iv) For each sample collected, slaughter facility representatives must maintain the identity of the sample using the TIN of the certified production site that was the source of the swine from which the sample was taken.

(v) FSIS program employees at the slaughter facility will review and verify that an adequate number of samples have been collected and that proper frequency of collection is maintained. FSIS will report this information to APHIS.

(vi) AMS representatives will verify through a laboratory approval audit that the laboratory performing process-verification testing is correctly following written procedures relating to the receipt, handling, identification, and testing of samples. These written procedures must be maintained by the laboratory in a quality assurance manual, as provided in paragraph (c)(6) of this section. In addition, a laboratory that performs process-verification testing at a location other than the slaughter facility must include a declaration of methodology used to test samples when providing test results.

(vii) The APHIS Administrator may, at APHIS' expense, periodically request that testing be performed on swine brought to the slaughter facility from specific certified production sites. Requests to test swine from specific certified production sites will count towards the slaughter facility's total monthly testing requirement.

[4] A copy of the testing methods and checklist for conducting validated tests may be obtained by contacting the Trichinae Program Manager, USDA, AMS, Science and Technology, Technical Services Branch, 1400 Independence Avenue, SW., Mail Stop 0272, Washington, DC 20250–0272; or by telephone at (202) 690–0621.

[5] A copy of the AMS Trichinae Accredited Laboratory Program Requirements may be obtained by contacting the Trichinae Program Manager (see footnote 3).

(4) *Results of testing.* (i) The results of all process-verification testing relating to certified swine handled at the slaughter facility must be retained in a separate file or notebook as written records at the slaughter facility and must be readily available for inspection by FSIS program employees.

(ii) FSIS will report to APHIS the results of all process-verification testing.

(iii) In the event of a positive test result, the slaughter facility representative must notify the FSIS program employee designated by the FSIS Administrator immediately, who in turn will report the TIN of the certified production site that was the source of the swine from which the sample was taken and the test results of the affected sample to the respective APHIS area office. The following sequence of events must take place following a positive test result:

(A) If a test sample yields a positive test result based on the digestion method, the certified production site that was the source of the swine from which the sample was taken will be decertified.

(B) If a test sample yields a positive test result based on an ELISA method and is confirmed positive by further testing using the digestion method, the certified production site that was the source of the swine from which the sample was taken will be decertified.

(C) If a test sample yields a positive test result based on an ELISA method, but is not confirmed positive by further testing using the digestion method, then the certified production site that was the source of the swine from which the sample was taken will be investigated by APHIS.

(*1*) The investigation may include a spot audit of the affected site. Further testing of animals or carcasses from the affected site also may be performed as part of the investigation. This investigation would determine if the production facility has sufficient safeguards and is following good production practices.

(*2*) While the affected site is under investigation, its program status as a certified production site will be suspended. While the site is under suspension, the producer must continue to adhere to all of the required good production practices and other recordkeeping and program requirements provided in this part; however, swine from the suspended site cannot be identified as product from a certified production site. The Administrator will determine the program status of the affected site within 30 days of the initiation of the suspension.

(*3*) A finding that risk factors are inadequately addressed in the site investigation or the finding of additional positive test results based on samples from animals or carcasses from the affected site will be grounds for APHIS decertification of the site.

(5) *Slaughter facility recordkeeping.* (i) All slaughter facilities that receive certified swine must maintain records relating to such animals, including the number of certified swine processed, the source of the certified swine, including the TIN of the certified production site from which the swine came from, and all test results relating to process-verification testing. Records relating to certified swine must be retained at the slaughter facility for a period of at least 3 years following the processing of such animals.

(ii) All slaughter facilities must have documented procedures on how certified swine under its control, and edible pork products derived from certified swine, will remain segregated from swine and edible pork products from noncertified sites throughout receiving, handling, and processing at the facility, as well as while awaiting shipment from the facility. The slaughter facility must also have documented procedures for maintaining the identity of the certified swine or pork with respect to the certified production site from which it came.

(iii) All such records and other documentation required to be maintained by slaughter facilities under this part must be readily available for inspection by FSIS program employees.

(6) *Approved laboratory recordkeeping.* Approved laboratories must have written procedures that specify standards for sample size, sample handling, sample identification, and sample test methods used in process-verification testing. All such written procedures must be maintained in a laboratory quality assurance manual specifically for this program, or as a separate section of an existing laboratory quality assurance manual, and must be retained at the approved laboratory throughout the time the approved laboratory is performing process-verification testing under this program. All such written procedures relating to process-verification testing must be readily available for inspection by FSIS program employees or AMS representatives.

(7) *Slaughter facility overall responsibility for process-verification testing.* The slaughter facility is responsible for obtaining testable samples and for ensuring that the correct number of testable samples are sent to the testing laboratory. Once the slaughtering facility receives the test results, it is responsible for reporting those results in its facility trichinae testing record. Moreover, the slaughter facility is responsible for ensuring that process-verification testing is carried out in accordance with this part, including the reporting of test results, regardless of whether it is performed at the slaughter facility or another location, and regardless of whether the testing is performed by slaughter facility personnel or other persons.

§ 149.7 Recordkeeping at site.

(a) Stage I enrolled sites, Stage II or Stage III certified sites, and any site that has been suspended or voluntarily decertified must maintain the following program records: Animal disposal plan, animal movement record, feed mill quality assurance affidavit (if applicable), rodent control logbook, and waste feeding logbook (if applicable). All such records must be readily available for inspection at the pork production site at the time of an audit by a QAV or QVMO, or by other APHIS representatives during normal business hours.

(1) *Animal disposal plan.* The animal disposal plan must meet the following minimum requirements:

(i) It must provide for the removal of all dead swine or swine remains from swine pens immediately upon detection. Inspections for purposes of detecting dead animals must occur at least once every 24 hours.

(ii) It must specify how often and at what intervals the swine pens are observed each day.

(iii) It must provide for the proper storage of dead swine or swine remains in accordance with local, State, and Federal laws and regulations. If the carcass storage facility or composting facility is located on the site, then the animal disposal plan must provide for a storage or composting facility that precludes rodent or wildlife contact with dead swine or swine remains being stored or composted.

(iv) It must provide for the disposal of swine and other mammals by rendering, incineration, composting, burial, or other means, as allowed by and in accordance with local, State, and Federal laws and regulations. For sites that use rendering services, the animal disposal plan also must include the name, address, and phone number of the renderer.

(v) It must be updated as animal disposal practices are changed at the site.

(vi) It must be signed and dated by the producer, as well as the caretaker of the

site (if the caretaker is a different person than the producer).

(vii) It may be valid for a period no longer than 2 years after the date of signature by the producer and (if applicable) the site caretaker.

(2) *Animal movement record.* The animal movement record must meet the following minimum requirements:

(i) It must be filled out completely and properly, accounting for the movement of all non-breeding swine into and from the pork production site.

(ii) In the case of non-breeding swine coming into the site, it must include the date and number of arriving animals, as well as the TIN of the certified production site where the animals originated, or alternatively, if the swine are less than 5 weeks of age and originated from a noncertified site, the name and full address of the noncertified site where the animals originated. The animal movement record must clearly document that all non-breeding swine 5 weeks of age or older arriving at the site originated from another certified production site.

(iii) In the case of non-breeding swine leaving the site, it must include the date and number of departing animals, and their destination.

(iv) It must document the number of dead non-breeding swine that are removed from the site, as well as the number of dead non-breeding swine that are buried or composted at the site, if swine burial or composting is permitted in that State or locality.

(v) All entries to the animal movement record must be signed or initialed and dated by the producer or other site caretaker making the entry.

(3) *Rodent control logbook.* The rodent control logbook, which may include records from a pest control operator, must meet the following minimum requirements:

(i) It must include a rodent control diagram for the site indicating the location of all rodent bait stations and rodent traps at the site. The diagram must be updated whenever bait stations are added, moved, or removed.

(ii) It must document the number of rodent traps set (if applicable), the number of new rodent bait stations set, and how often bait is refreshed.

(iii) It must document the disposal method for all unused bait that is replaced.

(iv) It must document the brand name and active ingredient of bait, which must be EPA registered and applied according to its label, as well as the quantity of bait used (number of pounds).

(v) If possible, it should document the number of rodents caught or killed and indicate how many were rats.

(vi) If possible, it should document the number of rats sighted monthly.

(vii) All entries to the rodent control logbook must be signed or initialed, as well as dated by the producer or other site caretaker making the entry. It must be updated at least monthly.

(4) *Feed mill quality assurance affidavit.* The feed mill quality assurance affidavit, to be used in conjunction with feed or feed ingredients delivered to the pork production site, must meet the following minimum requirements:

(i) It must include the name of the producer and the identity of the site, including the TIN if it has been issued, and the site address, as well as the name and address of the feed mill and the name and title of the feed mill representative.

(ii) It must provide that the feed mill is following good manufacturing practices, and further specify, as evidence of these good manufacturing practices, the following:

(A) That the feed mill has a rodent control system that is maintained by the feed mill itself or by a pest control firm (include name and address of pest control firm).

(B) The frequency with which such rodent control system is maintained (*i.e.*, on a weekly basis, etc.); and

(C) That the feed mill maintains records of pest management practices or has records generated by a pest control operator, which must be made available to the producer upon request.

(iii) It must be signed by the feed mill representative and by the producer or the producer's designated representative, to remain in effect for a period of 2 years.

(5) *Waste feeding logbook.* If the producer feeds meat-containing food waste to swine at the site, the producer must maintain a waste feeding logbook that meets the following minimum requirements:

(i) It must include the name of the producer and the identity of the site, including the TIN if it has been issued, the site address, and the number of the license or permit authorizing the feeding of such waste to swine.

(ii) It must be kept up-to-date with documentation evidencing adherence to applicable State and Federal food waste feeding laws and regulations.

(iii) It must provide information as to the method used in cooking the meat-containing food waste.

(iv) For each batch of meat-containing food waste cooked, it must record the batch number (if applicable to the operation), the temperature at which such food waste is cooked and the length of time it is held at that temperature, and the method for verifying the temperature and length of time cooked.

(v) For each batch of meat-containing food waste cooked, it must document the sources of meat.

(vi) It must evaluate and document on at least a monthly basis the level of sanitation of the site, taking into account the following factors:

(A) Whether garbage containers are clean and covered with lids;

(B) Sanitation of cooking area and equipment;

(C) Sanitation of feeding areas and waste disposal;

(D) Sanitation of storage areas;

(E) Rodent control system around equipment, storage, and feeding areas;

(F) Sanitation of waste hauling trucks or containers;

(G) Access of other animal species to food waste (wild animals, dogs, cats, etc.); and

(H) The potential for cross-contamination between cooked product and raw meat-containing food waste.

(vii) All entries to the waste feeding logbook must be signed or initialed, as well as dated, by the producer or other site caretaker making the entry.

(b) All such records and other documentation required under this section must be retained at the pork production site for a period of 2 years.

(c) All such records and other documentation required under this section must be readily available for inspection at the pork production site at the time of an audit by a QAV or QVMO, or by other APHIS representatives during normal business hours.

§ 149.8 Program fees and charges.

(a) *Site audit.* The producer is responsible for the cost of each site audit performed at the pork production site.

(1) If a QAV performs the site audit, then the producer will pay the QAV directly at a mutually agreed-upon time and rate.

(2) If a QVMO performs the site audit, then the producer will pay the QVMO at the time the site audit is performed in accordance with the rate and other conditions set by the QVMO's governmental employer. Further, if the QVMO who performs the site audit is employed by APHIS, then the producer will pay APHIS for this service at the hourly rate listed in table 2 for each employee required to perform the service. If the APHIS-employed QVMO performs the site audit on a Sunday, on

a holiday, or at any time outside the normal tour of duty of that employee, then the producer will pay APHIS for this service at the hourly rate listed in table 3 for each employee required to perform the service. Payment to APHIS for the services of an APHIS-employed QVMO, by certified check or U.S. money order, must be remitted to the QVMO at the time the site audit is performed.

TABLE 2.—RATES FOR SERVICES OF QVMO

	Beginning Oct. 1, 2003
Hourly rate:	
Per hour	$84.00
Per quarter hour	21.00
Per service minimum fee	25.00

TABLE 3.—OVERTIME RATES FOR SERVICES OF QVMO (OUTSIDE THE EMPLOYEE'S NORMAL TOUR OF DUTY)

	Beginning Oct. 1, 2003
Premium hourly rate Monday through Saturday and holidays:	
Per hour	$100.00
Per quarter hour	25.00
Premium hourly rate for Sundays:	
Per hour	112.00
Per quarter hour	28.00

(b) *Program fee.* The producer must pay APHIS a program fee at the time of each site audit in the amount of $51 to cover APHIS' administrative costs in processing the audit and operating the program. This program fee, payable to APHIS by certified check or U.S. money order, is due at the time of submitting the completed site audit form for APHIS evaluation.

(c) A producer will not be charged for the cost of having a spot audit performed at the pork production site.

§ 149.9 Pilot program sites.

Pork production sites participating in an APHIS-approved trichinae pilot program at the time of implementation of the Trichinae Certification Program on [*effective date of final rule*] will maintain their same program status as either a Stage I enrolled, Stage II certified, or Stage III certified site, as well as their same program anniversary date for purposes of completing a site audit and submitting the completed audit form and payment.

PART 160—DEFINITION OF TERMS

3. The authority citation for part 160 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

4. In § 160.1, a new definition would be added, in alphabetical order, for *qualified accredited veterinarian (QAV)* to read as follows:

§ 160.1 Definitions.

* * * * *

Qualified accredited veterinarian (QAV). An accredited veterinarian who has been granted an accreditation specialization by the Administrator pursuant to § 161.5 of this subchapter based on completion of an APHIS-approved orientation or training program.

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

5. The authority citation for part 161 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

6. Section 161.5 would be added to read as follows:

§ 161.5 Specialization.

An accreditation specialization recognized by the Administrator may be granted to an accredited veterinarian upon completion of an orientation or training program approved by APHIS. For certain accredited specializations, the cost of orientation or training may be borne by the accredited veterinarian. An accredited veterinarian granted an accreditation specialization will be referred to as a qualified accredited veterinarian or QAV. A QAV will be authorized to perform those activities and functions specifically provided for elsewhere in this chapter, for example, in part 149.[1]

Done in Washington, DC, this 7th day of May 2007.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E7–9236 Filed 5–15–07; 8:45 am]

BILLING CODE 3410–34–P

[1] For further information on accreditation specializations, including training requirements and fees, contact the National Veterinary Accreditation Program, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737, phone (301) 734–6188.

Federal Register

Wednesday,
May 16, 2007

Part VII

Federal Communications Commission

47 CFR Parts 1, 20, 27, and 90
Service Rules for the 698–806 MHz Band and Revision of the Commission's Rules Regarding Enhanced 911 Emergency Calling Systems, Hearing Aid-Compatible Telephones, and Public Safety Spectrum Requirements; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, 27, and 90

[WT Docket No. 06–150; CC Docket No. 94–102; WT Docket No. 01–309; WT Docket No. 03–264; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86; FCC No. 07–72]

Service Rules for the 698–806 MHz Band and Revision of the Commission's Rules Regarding Enhanced 911 Emergency Calling Systems, Hearing Aid-Compatible Telephones, and Public Safety Spectrum Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) adopts final rules governing wireless licenses in the 698–806 MHz Band (*i.e.*, the 700 MHz Band). This spectrum is currently occupied by television broadcasters and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (''DTV'') transition.

DATES: Effective May 16, 2007, except for the amendments to §§ 20.18(a), 27.50(c)(5), and 27.50(c)(8) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Moon at (202) 418–1793, *paul.moon@fcc.gov,* Mobility Division, Wireless Telecommunications Bureau; Paul D'Ari at (202) 418–1550, *paul.dari@fcc.gov,* Spectrum and Competition Policy Division, Wireless Telecommunications Bureau; John Evanoff at (202) 418–0848, *john.evanoff@fcc.gov,* Public Safety and Homeland Security Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, WT Docket No. 06–150; CC Docket No. 94–102; WT Docket No. 01–309; WT Docket No. 03–264; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86, FCC No. 07–72, adopted April 25, 2007 and released April 27, 2007. The full text of the Report and Order is available for public inspection on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Final Paperwork Reduction Act of 1995 Analysis

The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. Public and agency comments are due sixty days from publication of a summary of the Report and Order in the **Federal Register**. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and find that there are no results specific to businesses with fewer than 25 employees. We note that the information collections contained in § 20.18(j)(4) are a result of the amendments to § 20.18(a). We also note that § 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746–806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act.[1] The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

Synopsis

1. In this Report and Order, the Commission addresses rules governing wireless licenses in the 698–806 MHz Band (*i.e.*, the 700 MHz Band). This spectrum currently is occupied by television broadcasters in TV Channels 52–69 and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. The Commission has been considering rules related to the use of this spectrum in three ongoing proceedings: (1) The 700 MHz Commercial Services proceeding,[2] (2) the 700 MHz Guard Bands proceeding,[3] and (3) the 700 MHz Public Safety proceeding.[4] Because decisions on certain issues in the three proceedings are potentially interrelated, the three proceedings are being jointly addressed in the Report and Order. In doing so, the Commission seeks to promote access to 700 MHz Band spectrum and the provision of service to consumers across the county, including in rural areas, as

[1] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)–(B).

[2] *See* Service Rules for the 698–749, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, and § 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making,* 21 FCC Rcd 9345 (2006).

[3] *See* Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06–169 and 96–86, *Notice of Proposed Rule Making,* 21 FCC Rcd 10413 (2006).

[4] *See* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket 06–229, WT Docket No. 96–86, *Ninth Notice of Proposed Rule Making,* 21 FCC Rcd 14837 (2006); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Eighth Notice of Proposed Rulemaking,* WT Docket Nos. 96–86 and 05–157, 21 FCC Rcd 3668 (2006).

well as opportunities for broadband service for Public Safety users.

A. 700 MHz Commercial Services

1. Facilitating Access to Spectrum and Provision of Service to Consumers

(i) Mix of Geographic Service Area Sizes

2. The FCC finds that providing for a mix of geographic licensing areas in the 700 MHz Band will balance the demand for differently sized licenses demonstrated in the record and enhance access to the spectrum by a variety of potential licensees. In particular, the FCC determines to replace the unassigned Economic Area Groupings (EAGs)-sized license areas, as established in the current band plan, with a mix of geographic licensing areas consisting of Cellular Market Areas (CMAs), Economic Areas (EAs), and Regional Economic Area Groupings (REAGs). These revisions are consistent with the goal of providing greater access to spectrum for small providers and parties in rural areas, and improving the opportunity for a wider range of potential licensees to obtain access to this valuable spectrum.

3. In determining the size of service areas, the FCC has stated as a general principle that it will consider licensing the spectrum over a range of various sized geographic areas, including smaller service areas such as CMAs, where consistent with the record in that proceeding and with other factors that may be relevant to the spectrum. Many commenters, including small and regional service providers and entities that represent rural interests, favor an approach that would provide for a variety of license sizes beyond those in the current band plan. The FCC agrees with those commenters who observe that a revised mix of smaller license sizes would provide a more balanced set of initial licensing opportunities at this time and make available more licenses to match the needs of different potential users. The opportunities afforded by providing licenses with a mix of geographic areas were seen in the results of Auction No. 66 involving Advanced Wireless Services (AWS)–1 licenses, where many different bidders won smaller and mid-sized licenses, such as CMAs and EAs. The same policy of providing a mix of licenses that balances competing interests is appropriate here. These revisions will advance the FCC's statutorily directed goals to promote service to rural areas, promote investment in and the rapid deployment of new technologies and services, avoid the excessive concentration of licenses, and provide for the dissemination of licenses among a wide variety of applicants.

4. The FCC concludes that providing a mix of CMA, EA, and REAG licenses in the 700 MHz Commercial Services spectrum will be an effective means of providing increased access to spectrum, especially in rural areas, while simultaneously meeting other Commission goals. The FCC disagrees with commenters who argue that any changes to smaller area licenses should be limited to the Upper 700 MHz Commercial Services Band, and not be implemented in the Lower 700 MHz Band.

5. Consistent with its earlier findings with respect to license sizes in the Upper and Lower 700 MHz Bands, the FCC declines to adopt nationwide licensing for any of the 700 MHz Commercial Services spectrum blocks. It also declines to adopt service areas smaller than CMAs, such as county-sized areas, or other size areas, including Major Economic Areas (MEAs). Because the band plan for the 700 MHz Commercial Services Band no longer contains EAGs, for the EAs, REAGs, and CMAs the FCC will separately license the Gulf of Mexico with each of the following license divisions: EA licensing area 176; REAG licensing area 12; and Metropolitan Statistical Area (MSA) licensing area 306. The FCC adopts: (i) The same definition of EAs set forth in § 27.6(h) of the rules, currently applicable for AWS–1 spectrum, for EA licenses in the 700 MHz Commercial Services Band; (ii) the same definition of REAGs set forth in § 27.6(h) of the rules, currently applicable for AWS–1 spectrum, for REAG licenses; and (iii) the same definition of Metropolitan Statistical Areas and Rural Service Areas (MSAs/RSAs) set forth in § 27.6(c), currently applicable to Block C of the Lower 700 MHz Band, for CMAs. As the FCC has done in licensing other part 27 services, the Gulf of Mexico service area is comprised of the water area of the Gulf of Mexico starting 12 nautical miles from the U.S. Gulf coast and extending outward.

(ii) Secondary Markets

6. The FCC declines to adopt rules that would require 700 MHz Commercial Services Band licensees to make ''good faith'' efforts to negotiate with potential spectrum lessees, either as part of their performance requirements or as part of the criteria associated with license renewal. The FCC believes that such changes are unnecessary given the other measures it is adopting to promote access to spectrum in the 700 MHz Commercial Services Band. These measures involve revising the 700 MHz Commercial Services band plan to include a mix of smaller geographic licensing areas.

7. Most commenters support a decision not to impose a ''good faith'' negotiation obligation on the 700 MHz Commercial Services Band licensees. Some of these commenters argue that such a requirement would be unnecessarily burdensome and could lead to uneconomic decisions. Commenters supporting the adoption of a ''good faith'' requirement argue that the FCC should consider a licensee's secondary markets participation as part of its license renewal process. The FCC notes, however, that its current spectrum leasing rules already provide a licensee with significant incentives to enter into spectrum leasing arrangements because licensees may rely on the activities of its spectrum lessee(s) for purposes of complying with the licensee's construction requirements. The FCC concludes that its decision to adopt a mix of geographic license area sizes, combined with our existing secondary markets rules, are sufficient to promote access to spectrum. Accordingly, the FCC declines to adopt further secondary markets requirements at this time.

2. Auctions-Related Issues

(i) Aggregating Licenses

8. The FCC concludes that the public interest would be better served by relying on the existing secondary market to aggregate existing and new licenses rather than attempting to develop new rules and policies for incorporating existing 700 MHz Commercial Services licenses into an auction of new licenses. Parties bidding on new licenses should be able to accurately value those licenses, even absent an opportunity to simultaneously aggregate new with existing licenses. New licenses in the 700 MHz Commercial Services spectrum can be used independently of existing licenses. Applicants will be able to seek any of multiple new licenses, of varying geographic size, to serve any given location. Thus, the value of the new licenses is unlikely to depend significantly upon a party's ability to aggregate existing and new licenses. Moreover, the interests of aggregators are likely to be met in large part by the existing secondary market. Accordingly, the FCC concludes that no new rules or policies are needed to facilitate aggregation of existing and new 700 MHz Commercial Services licenses in order to increase the likelihood that these licenses will be assigned to the

parties most likely to put them to their most effective use.

(ii) Bidding Preferences

9. The FCC rejects the suggestions of certain commenters that it set aside licenses in the 700 MHz Commercial Services Band auction solely for designated entities and the argument that the FCC adopt a third small business definition to provide for a 35% bidding credit. Consistent with the FCC's tentative conclusion not to adopt Access Spectrum *et al.*'s band plan proposal and in light of various difficulties in implementing such a bidding credit, the FCC also does not adopt a bidding credit based on providing access to spectrum for 700 MHz public safety services.

10. Although the Communications Act requires that the FCC ensure that ''designated entities'' are given the opportunity to participate in the provision of spectrum-based services and, for such purposes, consider the use of bidding preferences, these preferences can take many forms. In an early attempt to meet these mandates, the FCC set aside blocks of spectrum in the Broadband PCS band to be held by designated entities. The FCC's experience in Broadband PCS auctions and subsequent auctions has demonstrated, however, that bidding credits for designated entities afford such entities substantial opportunity to compete with larger businesses for spectrum licenses and provide spectrum-based services. For example, Auction No. 66 demonstrated very recently that designated entities can succeed in auctions for licenses for valuable spectrum without any set-asides. In Auction No. 66, more than half the winning bidders were designated entities that received discounts on their gross winning bids and designated entities won over twenty percent of the licenses sold. Moreover, setting aside licenses risks denying the licenses to other applicants that may be more likely to use them effectively or efficiently for the benefit of consumers. Potentially excluding such applicants could compromise the FCC's pursuit of various statutory objectives including promoting the development and deployment of new technologies, products, and services for the benefit of the public and promoting efficient and intensive use of the spectrum.

(iii) Competitive Bidding and Aggregating New Licenses

11. The FCC's current competitive bidding rules authorize the use of package bidding and the FCC already has utilized a form of package bidding. Consequently, the question before the FCC now is whether it needs to make changes to our competitive bidding rules in order to enable a new form of package bidding for the 700 MHz Commercial Services auction. The FCC concludes that modifications to our current bidding systems, including those suggested by commenters, can be made without modifying its competitive bidding rules.

(iv) Modifications to the Tribal Land Bidding Credit

12. No parties provided suggestions for possible modifications to the FCC's tribal land bidding credit rules to promote the deployment of wireless services to tribal lands or addressed the relationship between post-auction credits and the deadline for depositing payments. In light of the record, the FCC concludes that it need not modify the tribal land bidding credit at this time.

3. Additional Rules for Licensees

(i) Criteria for Renewal

13. The FCC clarifies that all licensees in the 700 MHz Commercial Services Band seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 1.949 of the FCC's rules. Consistent with existing rules, as part of this renewal requirement licensees must demonstrate in their applications that they have provided substantial service during their past license term, which is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal. This requirement is distinct from performance requirements. Substantial service in the renewal context, as opposed to coverage benchmarks established for the performance requirement context, encompasses FCC consideration of a variety of factors including the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas, and any other factors associated with a licensee's level of service to the public. Accordingly, a licensee that meets the applicable performance requirements might nevertheless fail to meet the substantial service standard at renewal. Licensees must demonstrate at renewal that they have substantially complied with all applicable FCC rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements.

14. Under the revised § 27.14 of the FCC's rules, the FCC also is eliminating the filing of competing applications to requests for renewal of these 700 MHz licenses. The FCC is mindful of the potential costs and the burdens they impose on both it and licensees. The FCC agrees with comments that such administrative processes ''harken[ ] back to an old era * * * where competitors were known to file 'strike' applications against a renewal in the hope of getting a payoff.'' Under the revised § 27.14 of the FCC's rules, the FCC is therefore adopting a process by which 700 MHz Commercial Services Band licenses come back to the FCC for re-auction if a license is not renewed. The existing petition to deny process, coupled with the ability of a petitioner to participate in any subsequent auction to re-license spectrum that is returned to the FCC for lack of renewal, creates sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal. This approach protects the public interest without creating incentives for speculators to file ''strike'' applications.

15. By eliminating the filing of competing applications at renewal, the FCC finds that the concerns raised by the majority of commenters in this proceeding about renewal expectancies are moot. The FCC recognizes that the majority of commenters that addressed renewal issues did not support any changes to the part 27 renewal rules applicable to 700 MHz Commercial Services Band licensees. Moreover, some of these commenters expressed concern that any revision to the rules governing renewal proceedings would eliminate the concept of ''renewal expectancy'' that applied in comparative hearings. Because smaller carriers and rural interests in particular seemed concerned that certain rule changes would place a new burden on carriers ill-equipped to meet it, we have decided to maintain 700 MHz Commercial Services Band licensees' expectations of renewal by eliminating provisions for competing applications. This action provides additional certainty for all 700 MHz Commercial Services Band licensees, and requests by certain commenters to do otherwise could result in additional administrative burdens on licensees that we find not to be in the public interest.

(ii) License Terms

16. The FCC revises its rules to provide that initial authorizations for the 700 MHz Commercial Services Band will have a term not to exceed 10 years from February 17, 2009, which is the firm deadline for the DTV transition. Subsequent renewals will be for terms not to exceed 10 years. This revised

license term will apply to all licenses in the 700 MHz Commercial Services Band. However, because § 307(c)(1) of the Communications Act provides that a license for operating a broadcast station shall not be granted for a term that exceeds 8 years, the FCC retains the current provision that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations. The FCC does not revise the license term for Guard Band licensees because such revisions fall beyond the scope of the 700 MHz Commercial Services proceeding.

17. The FCC is extending the revised license term to both the already auctioned and unauctioned licenses in the 700 MHz Commercial Services Band. The FCC finds that uniformly extending the license term in this manner provides a level of parity for services within the same band. In addition, this treatment recognizes that band clearing and the resulting unencumbered use of the spectrum in the pre-DTV Act period was tied to a transition scheme that has now been replaced with a firm statutory transition date of February 17, 2009. Specifically, the underlying reason behind the current rule changed with passage of the DTV Act. The FCC previously determined that a definite termination date, *e.g.*, January 1, 2015, was preferable to a discrete term of years following the end of the DTV transition, which at that time was subject to extension on a market-by market basis. The same license terms that were adopted in the *Upper 700 MHz First Report and Order* were applied to licenses in the Lower 700 MHz Band. However, the DTV Act's uniform deadline for the DTV transition has effectively removed the issue of market-by-market broadcast incumbency. Under these circumstances, the FCC provides a level of uniformity by extending the revised license terms to all licensees in the 700 MHz Commercial Services Band, except for those engaging in broadcast services.

18. The FCC finds that a term not to exceed 10 years from February 17, 2009, should be used for initial authorizations in the 700 MHz Commercial Services Band, and that subsequent renewal terms will be 10 years. A ten-year license term is consistent with most other part 27 services, with the exception of recently auctioned AWS–1 licenses, which we address below, as well as with the license terms for other similar spectrum, such as that used for cellular service and PCS. In addition, this period will offer licensees regulatory certainty and help promote investment in the band. Under the current rules, all licensees would have terms that extend until January 1, 2015, which is only approximately six years from the end of the DTV transition. Thus, licensees that acquire their authorizations in a future auction would have had an initial license term less than ten years, and more likely for a shorter period, *i.e.*, six or seven years, depending on the date of the auction and issuance of the authorizations. In similar fashion, current licensees in the 700 MHz Commercial Services Band would only have approximately six years of access to their spectrum free from broadcasters. The FCC finds that a longer period should be made available to all licensees in order to provide sufficient time for the recovery of costs related to the development and deployment of new services, especially those based on technologies that are more advanced, more expensive, and which may take longer to develop. The 700 MHz Commercial Services Band is a likely band for the use of these more advanced technologies and we are concerned that a license term that expires only six years from the DTV transition provides too short a time period.

19. The FCC declines to increase the length of initial or renewal terms to fifteen years. The FCC disagrees with those commenters who argue that parity with AWS–1 services mandates a fifteen-year term for 700 MHz services. The ''relocation and band clearance issues'' that provided the rationale for the fifteen-year initial licenses for AWS–1 services do not apply here. The date certain of February 17, 2009, for the end of the DTV transition means that spectrum in the 700 MHz Band will be clear for use by 700 MHz Band licensees as of that date.

20. The FCC also disagrees with commenters who argue that the current license term should be retained in order to promote prompt use of the spectrum and with commenters who argue that the current rule should be kept to spur the development of a secondary market. The combination of the FCC decisions in this Report and Order and the FCC's secondary markets policies make it unlikely that this highly valued spectrum will sit unused. The FCC's secondary market spectrum leasing policies focus on promoting spectrum leasing arrangements, and the FCC has taken steps in this Report and Order to improve use of the spectrum, including the provision of a mix of geographic license areas consisting of CMAs, EAs, and REAGs.

21. Finally, because of the specifically applicable statutory limitation, the FCC will retain the current requirement that 700 MHz Commercial Services Band licensees commencing broadcast services will be required to seek renewal of their licenses for such services prior to the termination of the eight-year term following commencement of such operations. As stated above, § 307(c)(1) of the Communications Act provides that licenses granted for operating broadcast stations ''shall be for a term not to exceed 8 years.''

(iii) Power Limits for Lower 700 MHz Band and Upper 700 MHz Commercial Services Band Base Stations

22. The FCC modifies its power limit rules for the Lower 700 MHz Band and the Upper 700 MHz Commercial Services Band in a number of ways. First, the FCC implements a PSD model for defining power limits for base stations operating in the entire 700 MHz Commercial Services Band. The current power limit rules do not specify a bandwidth over which a licensee's power is to be limited, and could be construed to mean that the power limit applies on a ''per emission'' basis. Because some licensees may only transmit one emission within their given bandwidth, while others using technologies with narrower emissions might employ multiple emissions over that bandwidth, construing the power limit to apply on a ''per emission'' basis could allow licensees employing multiple emissions to transmit more total energy in their authorized spectrum blocks than licensees with only one emission in their spectrum blocks. To better accommodate all technologies, the FCC is clarifying that the maximum allowable power levels in the 700 MHz Commercial Services Band are to be defined on a ''per megahertz of spectrum bandwidth'' basis, rather than on a ''per emission'' basis. This clarification will enable higher power signals from wider band technologies, but will not result in a decrease in the total power currently allowed in the band from narrower band technologies. Given this clarification, the FCC is also adopting additional measures to protect against any possible increased risk of interference, especially to 700 MHz public safety users.

23. More specifically, the FCC will allow 700 MHz Commercial Services Band licensees employing bandwidths greater than 1 megahertz to meet a base station power limit of 1 kW/MHz ERP (*i.e.*, no more than 1 kW ERP in any 1 megahertz band segment). Licensees operating with bandwidths of less than one megahertz will, however, continue

to be permitted to operate at power levels up to 1 kW ERP over their bandwidth. Thus, for example, a licensee transmitting a signal with a bandwidth of 5 megahertz could employ a power level of 5 kW ERP over the 5 megahertz bandwidth, with each 1 megahertz band segment within the 5 megahertz bandwidth being limited to 1 kW ERP; and a licensee transmitting a signal with a bandwidth of 200 kilohertz could employ a power level of 1 kW ERP over the 200 kilohertz bandwidth. This approach to defining power limits will achieve a degree of technological neutrality by ensuring that all licensees regardless of technology choice have enough power to operate a viable service. This neutrality would not exist if all licensees, regardless of their operating bandwidth, were required to limit their base station power levels to 1 kW ERP per emission.

24. In response to proposals by parties seeking greater power limits for rural area operations, the FCC will permit power levels of up to 2 kW/MHz ERP in rural areas, and consistent with its decision above, the FCC will allow rural licensees operating with bandwidths less than one megahertz to operate at power levels up to 2 kW ERP over their bandwidth. In implementing this decision, the FCC will define rural areas, consistent with the *Rural Report and Order*, as those counties in the U.S. having a population of fewer than 100 people per square mile, based on the most recently available population statistics from the Bureau of the Census. Increasing the permissible power in rural areas will enable 700 MHz Commercial Services Band licensees operating in such areas to more easily implement their systems; and increasing power levels in rural areas would be consistent with the recent FCC decision to permit rural carriers in the Cellular, AWS, and Broadband PCS services to operate at higher power levels. The FCC notes that in the *Rural Report and Order*, where the same power increase was adopted, it decided, as a ''cautionary measure,'' to require carriers operating at higher power levels to coordinate with licensees operating within 75 miles of their base stations. Consistent with this decision, the FCC shall require any 700 MHz Commercial Services Band licensee seeking to operate a base station under our rules permitting power levels greater than 1 kW ERP in rural areas to coordinate in advance with all non-public safety 700 MHz licensees authorized to operate within 75 miles of the station and with all 700 MHz Regional Planning Committees that have jurisdiction within 75 miles of the station.

25. As noted above, licensees in the Lower 700 MHz Band are allowed to use up to 50 kW ERP if they do not produce signals exceeding a power flux density (PFD) of 3 mW/m^2 on the ground within 1 kilometer of the station. A number of commenters expressed views on the appropriateness of the current, maximum 50 kW ERP capability for Lower 700 MHz Band operations. Considering these comments, the FCC makes certain modifications to the power limit rules in the Lower 700 MHz Band. Specifically, the FCC will retain the ability of incumbent C and D Block licensees to employ power levels up to 50 kW ERP. In addition, because the FCC believes that unpaired blocks are conducive to the provision of broadcast-type operations, it shall permit licensees operating in any unpaired block(s) in the Lower 700 MHz Band to operate at a power level of 50 kW ERP as well. However, because the FCC believes that paired blocks are generally more conducive to the provision of mobile services, it shall not extend to new licensees operating in any Lower 700 MHz Band paired blocks the ability to operate at 50 kW ERP. This action helps preserve the flexibility the FCC originally envisioned for the Lower 700 MHz Band, *i.e.*, the use of both broadcast and mobile services in the band, by providing an environment conducive to mobile systems in the paired blocks and an environment conducive to broadcast-type systems in the unpaired blocks. Current and future licensees nevertheless will have the flexibility to implement broadcast-type or mobile systems in any particular block. For example, a licensee may implement a broadcast-type system in a paired block, but rather than a high-power, high-site system, it would have to design a distributed broadcast system.

26. In reaching this decision, the FCC concludes that it would not be appropriate to reduce the power limits of incumbent Lower 700 MHz Band licensees, who acquired their spectrum with the expectation that they would be able to employ 50 kW ERP transmissions in the band. Although the FCC recognizes concerns expressed by certain parties regarding the potential for adjacent band interference into the current unauctioned paired blocks (*i.e.*, the current A and B Blocks) from high power emissions in adjacent incumbent and unauctioned unpaired blocks, the FCC continues to believe that our out-of-band emission limits coupled with the 3 mW/m^2 PFD requirement will be effective in protecting unauctioned paired blocks from adjacent channel interference. The FCC notes, however, that the 50 kW ERP limit in the Lower 700 MHz Band was based on a traditional broadcast emission, which consists of a single emission within the licensed bandwidth. The FCC never intended that emissions within a single block in the Lower 700 MHz Band exceed 50 kW ERP. Accordingly, the FCC clarifies that the 50 kW ERP limit for the current C and D Blocks, and any additional unpaired block(s) in the Lower 700 MHz Band, is a cap on the average total power of all emissions within the full authorized spectrum of the blocks. For example, a single incumbent C or D Block base station with an emission bandwidth of 1 megahertz could transmit with the full 50 kW ERP, but no other emissions would be permitted in the remaining 5 megahertz of the block. This limit would also apply to the cumulative emissions of both licensees if a 6 megahertz incumbent or unauctioned unpaired block is disaggregated.

27. In implementing this PSD approach to the power limits in both the Lower 700 MHz Band and the Upper 700 MHz Commercial Services Band, the FCC continues to remain concerned that transmissions at higher power levels could potentially cause interference to adjacent channel operations. To mitigate the potential for harmful interference to adjacent channel operations, the FCC requires the following. For Lower 700 MHz Band licensees, if operating with a bandwidth of 1 megahertz or less and a transmitting power greater than 1 kW ERP non-rural or 2 kW ERP rural, or if operating with a bandwidth of more than 1 megahertz and a PSD greater than 1 kW/MHz ERP non-rural or 2 kW/MHz ERP rural, then that licensee must comply with the 3 mW/m^2 PFD limit. Thus, for example, a non-rural licensee transmitting an 8 kW ERP signal in a 5-megahertz bandwidth or a rural licensee transmitting a 4 kW ERP signal in a 1.25 megahertz bandwidth would have to satisfy the 3 mW/m^2 PFD limit. However, a licensee transmitting an 800 watt ERP signal in a 200 kilohertz bandwidth or a 4 kW ERP signal in a 5-megahertz bandwidth, or a rural licensee transmitting an 8 kW ERP signal in a 5-megahertz bandwidth, would not have to meet the PFD limit. Because the FCC wishes to remain especially vigilant regarding the potential for interference to public safety operations, it impose the following additional requirement on Commercial Services licensees operating in the Upper 700 MHz Band. Specifically, all Upper 700 MHz Commercial Services Band licensees,

both rural and non-rural, transmitting signals at a power levels greater than 1 kW ERP, irrespective of bandwidth, must satisfy the 3 mW/m^2 PFD limit. Thus, for example, an Upper 700 MHz Commercial Services Band licensee transmitting a 4 kW ERP signal in a 5-megahertz bandwidth would have to meet the PFD limit.

(iv) Power Limit Issues in WT Docket No. 03–264

28. The FCC will employ PSD for defining power limits in the 700 MHz Band. The FCC has thus granted the second of CTIA's requests as it applies to the 700 MHz Commercial Services Bands. However, the FCC shall not apply to the 700 MHz Band CTIA's proposal to double power limits in the PCS and AWS–1 bands—*i.e.*, a power increase that would apply in both rural and non-rural areas and would not be accompanied by a PFD limit. CTIA provides no justification for permitting an unrestricted doubling of power levels for the 700 MHz Commercial Services Bands, and the FCC finds no basis for adopting such limits for the band. Instead, as discussed above, the FCC is adopting rules for 700 MHz Band licensees that will allow for a power limit of 1 kW/MHz ERP in non-rural areas and 2 kW/MHz ERP in rural areas.

29. The FCC does, however, find merit in extending to the 700 MHz Commercial Services Band CTIA's proposal to use ''average,'' rather than ''peak'' power in measuring power levels. Although the use of ''average'' power will effectively result in an increase in 700 MHz Band power levels for non-constant envelope technologies, such as CDMA and WCDMA, the ''average'' measurement approach is a more accurate measure of the interference potential for these technologies. The FCC finds that any effective increase in power that would result through the use of an ''average'' measurement approach will be modest, and in any event will be outweighed by the benefit of measuring today's technologies using a more realistic and appropriate technique.

30. For purposes of clarifying the use of the ''average power'' measurement technique, the FCC makes the following determinations. First, the FCC concludes that the technique shall be made during a period of continuous transmission and be based on a measurement using a 1 megahertz resolution bandwidth. Second, the FCC shall restrict the peak-to-average (''PAR'') ratio of the radiated signal to 13 dB. Limiting the PAR to 13 dB strikes a balance between enabling licensees to use modulation schemes with high PARs (such as OFDM) and protecting other licensees from high PAR transmissions. Parties seeking to employ the ''average power'' measurement technique should consult with the FCC Laboratory for guidance on the appropriate averaging method for the particular technology they plan to use.

(v) Other Technical Issues

31. The FCC will retain the existing OOBE limits for commercial base stations operating in the Upper 700 MHz Commercial Services Band because it finds these restrictions provide sufficient and appropriate protection to 700 MHz public safety operations. The FCC also declines to impose any technical restrictions on Upper 700 MHz Commercial Services Band licensees to address potential IM interference to 700 MHz public safety operations. The FCC will, however, require Upper 700 MHz Commercial Services Band licensees and 700 MHz public safety entities, upon request from the other, to exchange information about their stations and systems. The FCC is adopting this requirement in order to limit the potential for IM interference to 700 MHz public safety mobile and portable devices from the transmissions of Upper 700 MHz Commercial Service Band base stations.

32. With regard to the argument for the need for increased OOBE limits, the conclusion that the FCC's 76 +10 log P OOBE limit will result in interference to 700 MHz public safety operations is based on the assumption of a 65 dB site isolation figure in analyzing potential interference between commercial base stations and public safety mobile/portable receivers. However, the FCC rejected this same premise in deciding not to adopt stricter OOBE limits in the *Upper 700 MHz Band Third MO&O*. In the *800 MHz Report and Order*, the FCC decided not adopt stricter OOBE limits to protect 800 MHz public safety operations. The FCC stated, as its rationale for not increasing the existing OOBE limit for the 800 MHz band, that the additional filtering needed to achieve proposed OOBE standards ''would add cost and complexity—but no benefit—to those cells in a system in which, because of their location, or otherwise, unacceptable OOBE interference would not occur'' and the FCC was therefore unwilling to ''impose stronger OOBE limits on every cell of every system in the country; particularly if only a handful of cells in a system might require them.'' The FCC continues to believe that any change to the OOBE limit required for commercial Upper 700 MHz Commercial Services Band base stations is unsupported.

(vi) 911/E911 Requirements

33. The FCC concludes that § 20.18(a) should be amended to apply 911/E911 requirements to all commercial mobile radio services (CMRS), including services licensed in the 700 MHz Commercial Services Band and the AWS–1 bands, to the same extent as they apply to wireless services currently listed in the scope provision of § 20.18. Thus, CMRS providers must comply with the 911/E911 requirements solely to the extent that they ''[offer] real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network-switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls'' (hereinafter, the ''§ 20.18(a) criteria''). The FCC will continue, however, to exclude MSS from § 20.18 in conformity with the Commission's decision in the *E911 Scope Order*.

34. The public interest generally requires wireless services meeting the § 20.18(a) criteria to provide 911/E911 service, even if not expressly enumerated. The FCC has observed previously that ''911 service is critical to our Nation's ability to respond to a host of crises,'' and that E911 in particular ''saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently.'' The FCC also takes note of Congress's finding in the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act) that ''for the sake of our Nation's homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation'' and that ''enhanced 911 is a high national priority.'' Accordingly, it is critical that mobile telephone services meeting the § 20.18(a) criteria continue to offer 911 and E911 as they make use of new frequencies.

35. The FCC further finds that commercial mobile radio services meeting the 20.18(a) criteria will also meet the four criteria set forth in the *E911 Scope Order*.[5] In particular, the

[5]Specifically, the Commission determined that it would consider whether (1) the service offers real-time, two-way voice service that is interconnected to the pubic switched network on either a stand-alone basis or packaged with other telecommunications services; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local exchange service; and (4) it is

Continued

FCC finds that these services are likely to compete with services provided pursuant to cellular, broadband PCS, or 800/900 MHz SMR licenses, and that subscribers will have similar expectations of emergency access from services meeting the § 20.18(a) criteria regardless of what frequencies carriers are using to provide them. Indeed, the FCC has found that for many Americans, ''the ability to call for help in an emergency is the principal reason they own a wireless phone.'' This should be no less true for a consumer calling from a phone utilizing 700 MHz, AWS, or any other spectrum. Further, the FCC finds no support in the record, and consider it unlikely, that additional, terrestrial-based commercial mobile radio services meeting all of the criteria of § 20.18(a) will present any special technical obstacles, as compared to currently deployed services, that would warrant modifications of the 911/E911 requirements. To the extent that such obstacles become apparent as new services are established, appropriate modifications can be considered at that time. The FCC therefore agrees with the commenters that the extension of the 911/E911 requirements under § 20.18 to all commercial mobile radio services meeting the § 20.18(a) criteria is justified by the interest in competitive neutrality as well as by the critical public safety benefits of 911/E911.

(vii) Hearing Aid-Compatible Wireless Handsets

36. For reasons similar to those discussed in the E911 section above, the FCC determines that all digital CMRS providers, including providers of such services in the 700 MHz Commercial Services Band and the AWS–1 and BRS/EBS bands, should be subject to hearing aid compatibility requirements under § 20.19 to the extent they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. In addition, manufacturers of wireless handsets that are capable of providing such service also should be made subject to the applicable requirements of § 20.19. As discussed below, however, the existence of an established, applicable technical standard is a statutory requirement for imposing hearing aid compatibility requirements. Because no such standard currently exists for any services beyond the broadband PCS, Cellular, and certain SMR bands, the FCC cannot presently impose hearing aid compatibility requirements on additional services. The FCC does commit to bringing all digital CMRS within the scope of the § 20.19 requirements as appropriate technical standards are developed, and we take steps to promote the development of these technical standards, as discussed below. In particular, the FCC establishes a specific timetable for the development of the necessary technical standards for those new services that have governing service rules in place. The FCC amends the rule to reflect these determinations, including its decision that hearing aid compatibility requirements will apply to any CMRS to the extent that it meets the criteria discussed above and there is an established technical standard for hearing aid compatibility applicable to the relevant handsets.

37. Extending hearing aid compatibility requirements to services beyond those currently covered will ensure that comparable service providers and manufacturers will be required to comply with similar hearing aid-compatible handset requirements regardless of the frequency bands on which they operate. Further, end users will be able to expect the full range of functionality found today in mobile phones without having to know the technical details, such as the frequencies on which their phones operate. Moreover, by clarifying the applicability of the hearing aid compatibility rules to these manufacturers and service providers now, the FCC enables them to begin planning to incorporate hearing aid compatibility compliance into their operations at the earliest possible stage, which should also promote a more efficient implementation. The FCC also ensures that the necessary parties become involved in ongoing discussions among the Commission, service providers, standards bodies, and industry representatives to develop additional standards for hearing aid compatibility measurement methods and parametric requirements.

38. The FCC concludes that any CMRS digital service that meets the § 20.19(a) criteria for inclusion should be subject to hearing aid compatibility requirements. The FCC declines, however, to impose hearing aid compatibility obligations on other services and bands at this time. When the FCC imposed the existing hearing aid compatibility obligations on handset manufacturers and service providers in 2003, it simultaneously approved ANSI C63.19 as an established technical standard applicable to the services covered by the rule. Indeed, the FCC noted that the existence of an established technical standard was a statutory requirement for imposing hearing aid compatibility, and further found that this statutory requirement was ''[f]undamental'' to the determination of whether to impose hearing aid compatibility on wireless devices. The FCC therefore finds that an applicable technical standard should be in place when hearing aid compatibility obligations are imposed in the 700 MHz Commercial Services Band and other bands.

39. As noted above, none of the available versions of the current hearing aid compatibility standard cover services in the 700 MHz Commercial Services Band or the AWS–1 or BRS/EBS bands. Nor do they provide tests for some of the technologies anticipated in these bands, such as WiMAX. HIA argues that the ANSI C63.19–2006 standard for the 800 MHz band provides an appropriate framework to measure performance in the 700 MHz Band for purposes of determining hearing aid compatibility, but the record does not establish that the existing standard can be extended to that band without modifications or amendments. Indeed, HIA concedes that modifications to the standard may be necessary, and the Hearing Loss Association of America (HLAA) also supports this conclusion, noting that changes to the standard will be necessary to accommodate emerging technologies. Accordingly, the FCC concludes that it cannot extend specific hearing aid compatibility obligations to emerging bands and services until specific standards that establish the hearing aid compatibility measurement methods and parametric requirements for these additional services' and bands' devices are developed.

40. The FCC will continue to monitor progress to make sure that the adoption of such standards proceeds in a timely manner. If no standards have been adopted within 24 months, the FCC will consider alternative means to implement compatibility requirements, including whether to develop new metrics for compliance entirely and/or whether to extend the C63.19–2006 standard for the 800 MHz Band into the 700 MHz Commercial Services Band, as HIA suggests. The FCC will not at this time establish a schedule for future action regarding bands other than the current 27.1(b) bands because it does not appear to be possible to develop

technically and operationally feasible for the service or device to support E911. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94–102, IB Docket No. 99–67, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340, 25347 ¶ 18 (2003) (''*E911 Scope Order*'').

compatibility standards in the absence of service rules. The FCC also notes that there is little or no discussion in the record of extending hearing aid compatibility beyond the 700 MHz Commercial Services Band. The FCC will, however, pursue appropriate action as the nature of services in new bands becomes more defined or we find that an applicable standard has been or can be developed.

B. 700 MHz Guard Bands

41. The FCC replaces the Guard Band Manager regime in favor of the spectrum leasing policies and rules adopted in the Secondary Markets proceeding, and removes certain use and eligibility restrictions regarding licensee operations and leasing to affiliates to encourage the most effective and efficient use of the Guard Bands spectrum. While the FCC seeks to provide licensees and spectrum lessees with greater latitude and remove regulatory barriers where possible, it retains the existing Guard Band Manager coordination requirements.

1. Adoption of Secondary Markets Spectrum Leasing Rules

42. Among the FCC's key public interest objectives is to ensure that spectrum is put to its most efficient and effective use, and the FCC has increasingly granted technical and operational flexibility to its licensees to enable them to achieve that goal when it is consistent with preventing unacceptable interference. In adopting the Secondary Markets spectrum leasing policies and rules, the FCC accommodated the demand for significantly broader access to licensed spectrum by enabling a wide array of facilities-based providers to enter into spectrum leasing arrangements with spectrum users. These rules provided licensees with greater ability and incentive to make unused spectrum available to third parties, and thus promoted the provision of new and diverse services and applications. Third parties that could benefit from such spectrum leasing arrangements may include current spectrum operators requiring additional spectrum to meet customer needs over either the short-or long-term, new entrants seeking to provide a niche service and serve a limited area or narrowly targeted end-user market, small businesses trying to deliver services in rural communities, or entities unable or unwilling to participate in spectrum auctions or that otherwise do not have a license through which they can access spectrum to meet consumer or internal operational needs. By adopting the Secondary Markets spectrum leasing model, the FCC sought to establish spectrum leasing policies that allow licensees and spectrum lessees significant flexibility to enter into leasing arrangements that best meet their respective business needs and enable more efficient use of spectrum.

43. The FCC agrees with commenters that the Secondary Markets spectrum leasing model may be more effective than the existing band manager rules in accomplishing the Commission's goals of permitting the efficient and intensive use of spectrum while protecting public safety operations from harmful interference. Although the FCC sought to provide appropriate incentives to encourage greater participation in band manager leasing arrangements, the Guard Band Managers appear to have had limited success in negotiating spectrum user agreements with third parties. In contrast, the steadily increasing number of spectrum leasing arrangements in the other Wireless Radio Services reflects the growing use and acceptance of Secondary Markets spectrum leasing policies by wireless providers and spectrum lessees as an effective method to make spectrum more readily available to additional spectrum users. Since the Secondary Markets spectrum leasing procedures went into effect in February 2004, licensees and spectrum lessees have entered into approximately 1,200 spectrum leasing arrangements.

44. Accordingly, the FCC determines that providing Guard Bands licensees the additional flexibility offered by the Secondary Markets spectrum leasing regime would enhance spectrum usage in the 700 MHz Guard Bands. Specifically, in order to provide maximum flexibility, Guard Band licensees now will have the option of entering into both spectrum manager leasing and *de facto* transfer leasing arrangements. By permitting Guard Band licensees and spectrum lessees to choose between the two different options, the FCC will afford licensees and spectrum lessees significant flexibility to craft the type of leasing arrangement that best matches their particular needs and the demands of the marketplace. This flexibility could, in turn, help achieve fuller utilization of the spectrum. For example, adopting rules that permit Guard Band licensees to participate in *de facto* transfer leasing—in which primary responsibility for compliance with statutory and regulatory policies and rules is transferred from licensees to spectrum lessees—could encourage a licensee to enter into a leasing agreement that might otherwise be unattractive due to the level of operational oversight necessary to ensure compliance with the FCC's rules in a specific case.

45. The FCC emphasizes, however, that by affording 700 MHz Guard Band licensees greater flexibility, particularly in the *de facto* transfer leasing context, it is not minimizing in any way the requirement that these licensees must ensure that adjacent public safety operations are protected from harmful interference. Protection of 700 MHz public safety operations from interference remains the primary goal of the Commission's policies relating to the 700 MHz Guard Bands. The FCC agrees with comments that the Secondary Markets spectrum leasing rules provide sufficient mechanisms to ensure non-interference with spectrum users in the adjacent 700 MHz Public Safety Band. As noted by the BOP proponents, the Secondary Markets spectrum leasing rules provide protection equivalent to the band manager rules.

46. Although the FCC recognizes that the additional flexibility afforded by the *de facto* transfer spectrum leasing option transfers the primary responsibility for ensuring interference protection to the spectrum lessee, the FCC concludes that public safety users will still be protected from interference under the Secondary Markets spectrum leasing rules. Under this option, 700 MHz Guard Band licensees continue to retain some responsibility for operations encompassed under their license authorizations, and may be held responsible in cases of ongoing violation or other egregious lessee behavior for which licensees have, or should have, knowledge. More importantly, although the FCC expects Guard Band licensees to continue to exercise some oversight of its lessees, the Commission retains direct authority to pursue remedies against lessees under § 503(b) of the Act. Spectrum lessees, whether under a spectrum manager leasing arrangement or a *de facto* transfer leasing arrangement, must strictly comply with the technical restrictions of the band, and must expressly agree to comply with all applicable Commission rules as a condition of the spectrum leasing arrangement. Regardless of whether the licensee or spectrum lessee holds primary responsibility for compliance with FCC rules, the FCC maintains the ability to take direct and swift action to enforce compliance with its rules.

47. The FCC concludes that it should apply our Secondary Markets spectrum leasing rules to the 700 MHz Guard Bands service. By doing so, the FCC will facilitate more efficient use of the spectrum by licensees and spectrum

lessees, and will produce a more market-driven system that should better meet the needs of the public without compromising the FCC's other core public interest goals—specifically, ensuring that public safety operations are protected from harmful interference. Although the FCC sought comment on whether we should permit licensees to choose between the existing Guard Band Managers regime or the Secondary Markets spectrum leasing rules, the FCC concludes that it is unnecessary to also allow licensees the ability to choose between the two leasing models, and thus replace the Guard Band Manager leasing regime with the Secondary Markets spectrum leasing policies and rules. Application of the Secondary Markets rules to all 700 MHz Guard Bands licensees will provide significant additional flexibility and ensure that these licensees are treated similarly to other Wireless Radio Services holding exclusive use licenses and leasing spectrum usage rights.

2. Use and Operational Flexibility

48. In addition to providing licensees and other spectrum users additional flexibility provided under our general Secondary Markets spectrum leasing rules, the FCC concludes that other changes to the 700 MHz Guard Bands rules should be made to promote more efficient and effective use of this spectrum.

49. *Band Manager Status.* In creating the 700 MHz Guard Bands service, the FCC designated Guard Band Managers as a new class of commercial licensee engaged solely in leasing spectrum to third parties. The FCC agrees with commenters that the FCC should re-evaluate its decision to limit the ability of licensees to act as service providers. The band manager rules and policies that specify that a Guard Band licensee may only act as a spectrum manager unduly restrict the ability of parties to use the spectrum, and may preclude the deployment of services that might otherwise be offered. Depending upon the circumstances, it may be that the Guard Band licensee itself is best positioned to make maximum use of the Guard Bands spectrum. Precluding a licensee from operating as a service provider may prevent access by parties that could make actual use of the band, and hinders, rather than facilitates, the efficient use of the spectrum. The FCC believes that, as long as a 700 MHz Guard Band licensee can fulfill its primary function of effectively managing its licensed spectrum and ensuring that 700 MHz public safety operations are protected from interference, there is little reason to preclude that licensee from also providing service. Accordingly, the FCC will revise its rules to permit licensees to operate as wireless service providers. To the extent that a licensee chooses to provide service, the FCC requires that the licensee update their license information if they plan to switch their regulatory status, and the FCC notes that licensees will be responsible for meeting all other obligations relating to their change in status.

50. *Restrictions on Leasing to Affiliates.* Similarly, the FCC concludes that it is in the public interest to remove the current restriction precluding any licensee from leasing more than 49.9 percent of its licensed spectrum to affiliates. As in the case of the policy precluding licensees from providing service, the FCC believes that its rule requiring that licensees lease the predominant amount of their spectrum to non-affiliates prevents entities from maximizing use of the spectrum, and hinders the provision of service to end users. This restriction also may prevent licensees and lessees from taking advantage of new technologies. To the extent that the FCC determines that broadband deployment is permissible in one or both of the 700 MHz Guard Bands, the FCC's restrictions that prevent Guard Band Managers from providing service or from leasing any more than 49.9 percent of its license to affiliates would hinder the ability of Guard Band licensees or their affiliates to deploy such service. Restrictions regarding use by the licensee or its affiliates may prevent entities from optimizing the use of the spectrum or entering into Secondary Markets spectrum leasing agreements with adjacent licensees that are not similarly restricted. Accordingly, the FCC eliminates this restriction.

51. *Other Lease Restrictions.* Under existing policies, 700 MHz Guard Band licensees are prohibited from imposing unduly restrictive requirements in the spectrum user agreements regarding access to, and use of, spectrum. In adopting these band manager rules, the FCC noted that Guard Band Managers would be afforded a considerable amount of latitude in determining the most efficient way to manage their spectrum. The FCC concluded, however, that it was necessary to ensure that band managers did not impose unreasonable terms and conditions on lessees or end users. Although these restrictions were aimed at ensuring that band managers do not engage in unreasonable practices, the existing rules may adversely affect the ability of Guard Band licensees to negotiate with spectrum users regarding otherwise standard lease provisions, such as mandating the use of a particular technology, that other wireless licensees are permitted to negotiate. The FCC notes that our Secondary Markets spectrum leasing rules do not have similar restrictions and its rules generally permit parties to determine the precise terms and provisions of their spectrum lease agreements. As noted above, the FCC is adopting for the Guard Bands the same spectrum leasing policies set forth in the Secondary Markets proceeding. The FCC believes that these policies provide sufficient incentives for licensees to lease spectrum usage rights, while also providing licensees with the ability to establish appropriate operational guidelines with spectrum lessees that protect public safety licensees from interference. As such, the FCC eliminates this requirement.

52. *Coordination Requirement.* The FCC requires Guard Band Managers to notify public safety frequency coordinators in the 700 MHz Public Safety Band, as well as adjacent-area Guard Band Managers, of the technical parameters of any site constructed in the Guard Band Manager's license area. Guard Band Managers must provide such identifying information as the frequencies coordinated, antenna height and location, and effective radiated power. The FCC does not change the coordination requirements for Guard Band licensees currently contained in § 27.601(d)(1) of its rules. The FCC notes that it imposed coordination requirements to minimize the potential for interference, and the FCC reiterates that the primary purpose of the Guard Bands is to prevent interference to adjacent public safety operations. Absent information indicating that its coordination requirements do not serve to prevent interference, the FCC concludes that we should retain the coordination requirements set forth in the rule. Given that the FCC is adopting the Secondary Markets spectrum leasing rules for the Guard Band service, the FCC clarifies how these coordination requirements will work in the context of spectrum leasing arrangements. To the extent a licensee enters into a spectrum manager lease arrangement, it retains *de facto* control of the spectrum and primary responsibility for ensuring compliance with the rules. Accordingly, for this type of spectrum leasing arrangement, the licensee is required to carry out these coordination responsibilities. If, however, a licensee enters into a *de facto* transfer leasing arrangement, the coordination and notification tasks set forth in § 27.601 of

the FCC's rules (as well as other responsibilities associated with *de facto* control) are, upon FCC approval, transferred from the licensee to the spectrum lessee. In this latter type of arrangement, the FCC notes that although the spectrum lessee becomes primarily responsible for complying with the required frequency coordination responsibilities under the license authorization, the FCC will continue to hold licensees responsible for the failure of a spectrum lessee to comply with the FCC's frequency coordination requirements.

Final Regulatory Flexibility Act Analysis

53. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[6] separate Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the *700 MHz Commercial Services Notice* in WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309; the *700 MHz Guard Band Notice*, WT Docket Nos. 06–169 and 96–86; and the *700 MHz Public Safety Notice*, PS Docket No. 06–229 and WT Docket No. 96–86.[7] The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[8]

54. Although § 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band,[9] the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *Report and Order,* including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Rules

55. In the *Report and Order*, with regard to commercial services, the Commission takes a number of steps to facilitate access to spectrum and the provision of service to consumers, especially those in rural areas, and to simplify and clarify our rules related to the commercial 700 MHz spectrum. The Commission decides that it will auction the Commercial Services licenses across a mix of geographic service area definitions. The Commission also extends the date for initial license terms from January 15, 2015, to the end of the DTV transition on February 17, 2019. With regard to radiated power limits, the Commission generally adopts a power spectral density model, with certain limitations, to provide greater operational flexibility to licensees operating at wider bandwidths, and provides for higher radiated power levels for those 700 MHz licensees operating in rural areas under the current 1 kW per MHz power limit. The Commission also modifies the 911/E911 rules to remove the service- and band-specific limitations on the applicability of those requirements. Further, the Commission finds that all digital CMRS providers, including providers in the 700 MHz, Advanced Wireless Services, and the Broadband Radio Service/Educational Broadband Service bands, along with manufacturers of handsets capable of providing such services, should be subject to the Commission's hearing aid compatibility requirements to the extent that a service satisfies the scope provision the current rules.

56. The Commission also adopts rules to enhance spectrum usage in the 700 MHz Guard Bands by replacing the Guard Band Manager spectrum leasing regime with the Secondary Markets spectrum leasing policies and rules. Guard bands licensees will have the option of entering into *de jure* and *de facto* transfer leasing arrangements. By permitting Guard Band licensees and spectrum lessees to choose between the two different options, the Commission affords licensees and spectrum lessees significant flexibility to craft the type of leasing arrangement that best matches their particular needs and the demands of the marketplace.

B. Legal Basis

57. The authority for the actions taken in this *Report and Order* is contained in §§ 1, 4(i), 7, 10, 201, 202, 208, 214, 215, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 316, 317, 324, 331, 332, 336, 337 and 710, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 215, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 317, 324, 331, 332, 336, 337, and 610.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

58. No comments specifically addressed the IRFAs from any of the respective proceedings. We have nonetheless addressed small entity issues found in comments in this FRFA.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

59. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[10] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [11] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[12] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field

[6] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[7] *See* Service Rules for the 698–749, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, and § 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345, 9394 (2006) (''*700 MHz Commercial Services Notice*''); Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06–169 and 96–86, *Notice of Proposed Rule Making*, 21 FCC Rcd 10413, 10440 (2006) (''*700 MHz Guard Bands Notice*''); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Ninth Notice of Proposed Rule Making*, 21 FCC Rcd 14837, 14853 (2006) (''*700 MHz Public Safety Ninth Notice*'').

[8] *See* 5 U.S.C. 604.

[9] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, § 3 of the Small Business Act (15 U.S.C. 632) and §§ 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)–(B).

[10] 5 U.S.C. 604(a)(3).

[11] 5 U.S.C. 601(6).

[12] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[13]

60. *Governmental Entities.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [14] As of 2002, there were approximately 87,525 governmental jurisdictions in the United States.[15] This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be 85,931 or fewer.

61. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this *Report and Order.* The rule changes affect Upper 700 MHz and Lower 700 MHz Band licensees in the 698–746, 747–762, and 777–792 MHz spectrum bands, as well as all commercial mobile radio services (CMRS) with respect to 911/E911 requirements adopted in this *Report and Order.*

62. Since this *Report and Order* applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

Part 27 Miscellaneous Wireless Communications Services (MWCS)

63. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[16] The SBA has approved these definitions.[17] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

64. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[18] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[19] Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[20] SBA approval of these definitions is not required.[21] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[22] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[23]

65. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order authorizing service in the Upper 700 MHz band.[24] An auction for these licenses, previously scheduled for January 13, 2003, was postponed.[25]

66. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[26] The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[27] A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[28] Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[29] The SBA has approved these small size standards.[30] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed

[13] 15 U.S.C. 632.

[14] 5 U.S.C. 601(5).

[15] U.S. Census Bureau, Statistical Abstract of the United States: 2006, § 8, pages 272–273, Tables 415 and 417.

[16] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

[17] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[18] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299 (2000).

[19] *Id.* at 5343108.

[20] *Id.*

[21] *Id.* At 5343 ¶ 108 n.246 (for the 746–764 MHz and 776–704 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

[22] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice*, 15 FCC Rcd 18026 (2000).

[23] *See* ''700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,'' *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[24] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

[25] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

[26] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022 (2002).

[27] *Id.* at 1087–88 ¶ 172.

[28] *Id.*

[29] *Id.* at 1088 ¶ 173.

[30] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

small business, very small business or entrepreneur status and won a total of 329 licenses.[31] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.[32] Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[33]

67. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands.[34] Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' [35] Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' [36] An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

68. *Advanced Wireless Services.* In the *AWS–1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands.[37] The *AWS–1 Report and Order* defines a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The *AWS–1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

69. *Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service).* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[38] In its recently issued *BRS/EBS Report and Order* in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495–2690 MHz.[39] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[40] The SBA has approved of this standard.[41] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[42] Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[43]

Additional Wireless Radio Services (WRS)

70. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' [44] Under that SBA category, a business is small if it has 1,500 or fewer employees.[45] For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[46] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[47] Thus, under this category and

[31] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

[32] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[33] *Id.*

[34] *See* Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) (*Government Transfer Bands Service Rules Report and Order*).

[35] *See Service Rules Notice,* 17 FCC Rcd at 2550–51 ¶¶ 144–146. To be consistent with the size standard of ''very small business'' proposed for the 1427–1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding $3 million, the *Service Rules Notice* proposed to use the terms ''entrepreneur'' and ''small business'' to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively. Because the Commission has not adopted a $3 million size standard for the 1427–1432 MHz band, it instead uses the terms ''small business'' and ''very small business'' to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively.

[36] *See* Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, *Notice of Proposed Rulemaking,* 17 FCC Rcd 2500, 2550–51 ¶¶ 144–146 (*Government Transfer Bands Service Rules Notice*). To be consistent with the size standard of ''very small business'' proposed for the 1427–1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding $3 million, the *Government Transfer Bands Service Rules Notice* proposed to use the terms ''entrepreneur'' and ''small business'' to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively. Because the Commission is not adopting small business size standards for the 1427–1432 MHz band, it instead uses the terms ''small business'' and ''very small business'' to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively.

[37] Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02–353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS–1 Report and Order*).

[38] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of § 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995) (*MDS Auction R&O*).

[39] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS Report and Order* and *BRS/EBS Further Notice*, respectively).

[40] 47 CFR 21.961(b)(1).

[41] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated Mar. 20, 2003 (noting approval of $40 million size standard for MDS auction).

[42] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O*, 10 FCC Rcd at 9608 ¶ 34.

[43] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of § 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[44] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

[45] *Id.*

[46] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517212 (issued Nov. 2005).

[47] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the

Continued

size standard, the majority of firms can be considered small.

71. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[48] For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[49] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[50] Thus, under this category and size standard, the majority of firms can be considered small.

72. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[51] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[52] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[53] The SBA has approved these small size standards.[54] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[55] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[56] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[57] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[58]

73. *Paging.* In the *Paging Second Report and Order*, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[59] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[60] The SBA has approved this definition.[61] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[62] Fifty-seven companies claiming small business status won 440 licenses.[63] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[64] 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[65] Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the Commission's *Trends in Telephone Service*, 375 such carriers reported that they were engaged in the provision of either paging or ''messaging service.''[66] Of these, the Commission estimates that 370 are small, under the SBA-approved small business size standard.[67] The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

74. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[68] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity

largest category provided is for firms with ''1000 employees or more.''

[48] 13 CFR 121.201, NAICS code 517212.

[49] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517212 (issued Nov. 2005).

[50] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[51] Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70 ¶¶ 291–295 (1997).

[52] *Id.* at 11068 ¶ 291.

[53] *Id.*

[54] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[55] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

[56] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

[57] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

[58] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[59] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order*, 12 FCC Rcd 2732, 2811–2812 ¶¶ 178–181 (*Paging Second Report and Order*); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085–10088 ¶¶ 98–107 (1999).

[60] *Paging Second Report and Order*, 12 FCC Rcd at 2811 ¶ 179.

[61] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[62] *See* ''929 and 931 MHz Paging Auction Closes,'' *Public Notice*, 15 FCC Rcd 4858 (WTB 2000).

[63] *See id.*

[64] *See* ''Lower and Upper Paging Band Auction Closes,'' *Public Notice*, 16 FCC Rcd 21821 (WTB 2002).

[65] *See* ''Lower and Upper Paging Bands Auction Closes,'' *Public Notice*, 18 FCC Rcd 11154 (WTB 2003).

[66] *See Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers by Size of Business) (June 2005).

[67] 13 CFR 121.201, NAICS code 517211.

[68] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852 ¶¶ 57–60 (1996); *see also* 47 CFR 24.720(b).

that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[69] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[70] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[71] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[72] On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.[73] Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

75. *Narrowband Personal Communications Service*. The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[74] Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.[75] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[76] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[77] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[78] The SBA has approved these small business size standards.[79] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.[80] Three of these claimed status as a small or very small entity and won 311 licenses.

76. *Specialized Mobile Radio*. The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[81] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[82] The SBA has approved these small business size standards for the 900 MHz Service.[83] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[84] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[85]

77. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

78. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $3 million or $15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over $15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

[69] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

[70] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[71] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (rel. January 14, 1997).

[72] *See* ''C, D, E, and F Block Broadband PCS Auction Closes,'' *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[73] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice*, 16 FCC Rcd 2339 (2001).

[74] Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

[75] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice*, PNWL 94–004 (rel. Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice*, PNWL 94–27 (rel. Nov. 9, 1994).

[76] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

[77] *Id.*

[78] *Id.*

[79] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[80] *See* ''Narrowband PCS Auction Closes,'' *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

[81] 47 CFR 90.814(b)(1).

[82] *Id.*

[83] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. The Commission notes that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

[84] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' '' *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[85] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

79. *Private Land Mobile Radio.* Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. The SBA has developed a small business size standard for the economic census category, ''Cellular and Other Wireless Telecommunications,'' which is any such entity employing no more than 1,500 persons.[86] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition.

80. *Fixed Microwave Services.* Fixed microwave services include common carrier,[87] private-operational fixed,[88] and broadcast auxiliary radio services.[89] Currently, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. As noted, the SBA has developed a small business size for the broad census category, ''Cellular and Other Wireless Telecommunications'' companies—that is, an entity with no more than 1,500 persons.[90] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

81. *39 GHz Service.* The Commission defines ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[91] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[92] The SBA has approved these definitions.[93] The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

82. *Local Multipoint Distribution Service.* An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[94] An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[95] These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA.[96] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

83. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[97] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[98] For future auctions in the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[99] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[100] The SBA has approved of these definitions.[101] At this time, no additional auction is scheduled.

84. *Location and Monitoring Service.* Multilateration Location and Monitoring Service (LMS) systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross

[86] *See* 13 CFR 121.201, NAICS code 517212.

[87] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[88] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See generally* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[89] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[90] 13 CFR 121.201, NAICS code 517212.

[91] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, *Report and Order,* 12 FCC Rcd 18600 (1997).

[92] *Id.*

[93] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002.

[94] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90 ¶ 348 (1997).

[95] *Id.*

[96] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[97] *See* ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,'' *Public Notice*, 9 FCC Rcd 6227 (1994).

[98] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

[99] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

[100] *Id.*

[101] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

revenues for the preceding three years not exceeding $15 million.[102] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[103] These definitions have been approved by the SBA.[104] An auction for multilateration LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. In addition, there are numerous site-by-site non-multilateration licensees, and the Commission does not know how many of these providers have annual revenues of no more than $3 million or $15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed *supra*). The Commission assumes, for purposes of this analysis, that all of these licenses are held by small entities.

85. *Rural Radiotelephone Service.* The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.[105] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

86. *Air-Ground Radiotelephone Service.* The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.[106] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA standard.

87. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.[107] The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA standard. The Commission assumes, for purposes of this analysis, that all of the 55 licensees are small entities, as that term is defined under the SBA standard.

88. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[108] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[109] The SBA has approved of these special small business size standards.[110] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[111] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

89. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. As noted, the SBA has developed a small business size standard for the broad economic census category, ''Cellular and Other Wireless Telecommunications,'' which is any such entity employing no more than 1,500 persons.[112] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

90. *Incumbent 24 GHz Licensees.* The rules at issue could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. As noted, the SBA has developed a small business size standard for the broad economic census category, ''Cellular and Other Wireless Telecommunications,'' which is any such entity employing no more than 1,500 persons.[113] The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [114] and TRW, Inc. The Commission understands that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

91. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[115] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has

[102] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 ¶ 20 (1998); *see also* 47 CFR 90.1103.

[103] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192 ¶ 20; *see also* 47 CFR 90.1103.

[104] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Feb. 22, 1999.

[105] 13 CFR 121.201, NAICS code 517212.

[106] *Id.*

[107] *Id.*

[108] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008 ¶ 123 (2000).

[109] *Id.*

[110] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

[111] *See* ''Multiple Address Systems Spectrum Auction Closes,'' *Public Notice*, 16 FCC Rcd 21011 (2001).

[112] *See* 13 CFR 121.201, NAICS code 517212.

[113] *See Id.*

[114] Teligent acquired the Digital Electronic Message Service (DEMS) licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[115] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 ¶ 77 (2000) (*24 GHz Report and Order*); *see also* 47 CFR 101.538(a)(2).

average gross revenues not exceeding $3 million for the preceding three years.[116] The SBA has approved these size standards. At this time, no additional auction is scheduled.

92. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts.[117] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[118] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[119] Thus, under this size standard, the majority of firms can be considered small.

93. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The Census Bureau has defined a category of Cable and Other Program Distribution as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' [120] The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts.[121] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[122] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[123] Thus, under this size standard, the majority of firms can be considered small.

94. *Cable Companies and Systems.* The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[124] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[125] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[126] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.[127] Thus, under this second size standard, most cable systems are small.

95. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [128] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[129] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[130] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[131] and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

96. *Multichannel Video Distribution and Data Service.* Multichannel Video Distribution and Data Service (MVDDS) is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. Licenses in this service were auctioned in January 2004, with 10 winning bidders for 192 licenses. Eight of these 10 winning bidders claimed small businesses status for 144 of these licenses.[132]

97. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

98. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. As noted, the SBA has developed a small business size standard for the broad economic census category, ''Cellular and Other Wireless Telecommunications,'' which is any such entity employing no more than 1,500 persons.[133] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and

[116] *24 GHz Report and Order*, 15 FCC Rcd at 16967 ¶ 77; *see also* 47 CFR 101.538(a)(1).

[117] 13 CFR 121.201, NAICS code 517510.

[118] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[119] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[120] U.S. Census Bureau, 2002 NAICS Definitions, ''517510 Cable and Other Program Distribution''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[121] 13 CFR 121.201, NAICS code 517510.

[122] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[123] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[124] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[125] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, ''Top 25 Cable/Satellite Operators,'' pages A–8 and C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[126] 47 CFR 76.901(c).

[127] Warren Communications News, *Television & Cable Factbook 2006*, ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[128] 47 U.S.C. 43(m)(2); *see* 47 CFR 76.901(f) and nn. 1–3.

[129] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[130] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, ''Top 25 Cable/Satellite Operators,'' pages A–8 and C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[131] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[132] ''Multichannel Video Distribution and Data Service Auction Closes,'' *Public Notice*, DA 04–215 (Feb. 2, 2004).

[133] 13 CFR 121.201, NAICS code 517212.

December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[134] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

99. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of the rules.[135] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[136] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, the Commission applies the small business size standard ''Cellular and Other Wireless Telecommunications,'' pursuant to which a small entity is defined as employing 1,500 or fewer persons.[137] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

100. Despite the paucity, or in some instances, total absence, of information about their status as licensees or regulatees or the number of operators in each such service, users of spectrum in these services are listed here as a matter of Commission discretion in order to fulfill the mandate imposed on the Commission by the RFA to regulate small business entities with an understanding towards preventing the possible differential and adverse impact of the Commission's rules on smaller entities. Further, the listing of such entities, despite their indeterminate status, should provide them with fair and adequate notice of the possible impact of the instant proposals.

101. *Public Safety Radio Licensees.* As a general matter, public safety radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[138] The SBA rules contain a small business size standard for ''Cellular and Other Wireless Telecommunications,'' which encompass business entities engaged in wireless communications employing no more than 1,500 persons.[139] According to Census Bureau data for 2002, in this category there was a total of 8,863 firms that operated for the entire year.[140] Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees.[141] With respect to local governments, in particular, since many governmental entities as well as private businesses comprise teh licenses for these services, the Commission includes under public safety services the number of government entities affected.

102. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [142] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[143] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[144] Of this total, 1,010 had employment of under 500, and an additional 13 had

[134] Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[135] 47 CFR part 90.

[136] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[137] 13 CFR 121.201, NAICS Code 517212.

[138] *See* subparts A and B of part 90 of the Commission's Rules, 47 CFR 90.1–90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[139] *See* 13 CFR 121.201 (NAICS code 517212); U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Employment Size of Establishments for the United States: 2002,'' Table 2, NAICS code 517212.

[140] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Employment Size of Establishments for the United States: 2002,'' Table 2, NAICS code 517212.

[141] *Id.*

[142] U.S. Census Bureau, 2002 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342*.

[143] 13 CFR 121.201, NAICS code 334220.

[144] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); http://factfinder.census.gov. The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

employment of 500 to 999.[145] Thus, under this size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

103. The projected reporting, recordkeeping, and other compliance requirements resulting from the Report and Order will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum.

104. *Renewal Procedures.* In this *Report and Order*, the Commission revises § 27.14 of the rules to eliminate the filing of competing applications at the time of the renewal of 700 MHz licenses. This rule change will relieve all licensees, including small businesses that hold or will hold licenses in the 700 MHz Band the burden of possibly facing a comparative hearing. The *Report and Order* also clarifies that within the renewal context, all licensees must make a substantial service showing and demonstrate that they have substantially complied with the Commission's rules, policies, and the Communications Act of 1934, as amended.[146] This requirement is distinct from the performance requirements that the Commission seeks comment on in the *Further Notice.*

105. *911/E911.* There is no general reporting or recordkeeping requirements for 911/E911 compliance. The 911/E911 obligations established in § 20.18 of our rules, however, are extended to cover all commercial mobile radio services (CMRS), including services licensed in the 700 MHz Commercial Services Band and the AWS–1 bands, to the same extent as they apply to wireless services currently listed in the scope provision of § 20.18. The Commission will continue, however, to exclude MSS from § 20.18 in conformity with the Commission's decision in the *E911 Scope Order.*[147] All other CMRS providers must comply with the 911/E911 requirements to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network-switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.[148] The Commission finds that this extension of 911/E911 requirements, while substantial for small carriers, is justified by the interest in competitive neutrality as well as by the critical public safety benefits of 911/E911. To the extent that special circumstances arise in particular situations where compliance may not be technically or economically feasible, waiver relief is available on a case-by-case basis. In addition, to the extent that carriers pursue a handset-based compliance solution, implementation should be easier than in previous 911/E911 compliance instances involving other services. Given that the 911/E911 requirements in part 27 will be imposed prior to the commencement of services in the 700 MHz band, all of the subscribers to the new services will have compliant handsets from the commencement of service. Small carriers will therefore not have the complication of replacing phones that lack 911/E911 capability.

106. *Public Safety Notification.* In this *Report and Order*, the Commission takes steps to address potential intermodulation (''IM'') to public safety operations in the 700 MHz Band. Specifically, as the Commission did with respect to 800 MHz ESMR and Cellular licensees,[149] the Commission will require 700 MHz Commercial Services Band licensees, upon request from a 700 MHz public safety entity, to provide to that entity information about the location and parameters of any stations they plan to activate in the public safety entity's area of operation.[150] The Commission will also require, as it did in § 90.675, public safety licensees to provide, upon request of a 700 MHz Commercial Services Band licensee, the operating parameters of their radio systems.[151] As indicated in the *800 MHz Report and Order,* these actions can both help prevent potential interference from occurring and help identify possible sources of interference more rapidly, if interference were to occur.[152] It is not anticipated that it will be onerous for small businesses to come into compliance with this requirement, which is triggered only upon a request from a public safety entity. The information to be reported is of a type that the licensee will likely have readily available.

107. *Application of Secondary Markets Spectrum Leasing Policies and Rules to the Guard Bands.* Although the *Report and Order* replaces the Guard Band Manager spectrum leasing regime with the Secondary Markets spectrum leasing policies and rules, it sustains the requirements that applied to the Guard Band Manager regime with respect to the necessity to file annual reports with the Commission on spectrum use, as well as mandatory coordination with

[145] *Id.* An additional 18 establishments had employment of 1,000 or more.

[146] *See* 47 CFR 27.14 (2006).

[147] The Commission initially excluded MSS from § 20.18 in the *E911 Report and Order. See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18718 ¶ 83 (1996) (*E911 Report and Order*). In the *E911 Scope Order*, upon revisiting the issue, the Commission recognized that MSS operators continued to faced unique difficulties in implementing 911 and E911 obligations, and therefore declined to apply the obligations of § 20.18 and instead imposed a separate, limited 911 requirement specifically for MSS, including a requirement to establish emergency call centers. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94–102, IB Docket No. 99–67, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340, 25347–57 ¶¶ 20–39 (2003) (''*E911 Scope Order*'').

[148] 47 CFR 20.18(a).

[149] *See* 47 CFR 90.675.

[150] As per § 90.675, this would include information about the 700 MHz station's location, effective radiated power, antenna height, and channels available for use. 47 CFR 90.675. Also, as per § 90.675, Public Safety licensees will not be afforded the right to accept or reject the activation of a proposed 700 MHz station or to unilaterally require changes to the station's operating parameters. We note as well that 700 MHz licensees may regard their operating parameters as proprietary and if so, we encourage such licensees to use non-disclosure agreement whereby third parties will not be given access to such information. Failing that, the affected parties could seek a protective order from the Commission. *See* Digital Output Protection Technology and Recording Method Certifications, *Order*, 19 FCC Rcd 4735 (2004). *See also* 47 CFR 0.457, 0.459. We also encourage, but do not require, that such matters be submitted to arbitration, mediation, or other alternative dispute resolution mechanisms.

[151] Public Safety licensees will also be required to provide information about any technical changes they plan to make to their systems.

[152] *See* Improving Public Safety Communications in the 800 MHz Band, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service, WT Docket 02–55, ET Docket Nos. 00–258 and 95–18, RM–9498, RM–10024, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15038–39 ¶ 125 (2004) (''*800 MHz Report and Order*'') (''if the characteristics of a proposed new cell are known in advance, it is possible to analyze the cell's potential for interference and make any necessary revisions to cell parameters before the cell is activated''), 15039 ¶ 127.

public safety entities for all uses of spectrum including that procured through leasing arrangements. The *Report and Order* also eliminates restrictions that had prevented Guard Band licensees from using their spectrum as system operators, and from leasing any more than 49.9 percent of their spectrum to affiliates.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

108. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[153]

109. In the *700 MHz Commercial Services Notice*, the Commission invited comment on extending the license terms of 700 MHz Band licenses to an expiration date beyond 2015 in order to afford licensees a sufficient period of time for deployment of new 700 MHz Band services once the DTV transition is complete. In addition, the *Notice* sought comment on whether the power limits in the existing rules for the 700 MHz Band spectrum should be revised. Finally, the Commission sought comment on its tentative conclusion that services provided in the 700 MHz Band, and in other bands subject to part 27 of the rules such as AWS–1, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands, and on whether such requirements should be extended to all similar wireless services.

110. *Small Geographic Service Areas.* A number of small and rural service providers, as well as several different coalitions of small, regional, and rural carriers proposed a mix of service areas that would include 12 REAGs, 176 EAs, and 734 CMAs, instead of just six EAGs. Several national carriers filed comments in support of leaving the EAG pattern in place. Separate comments were also received seeking a nationwide license and license areas smaller than CMAs.

111. The Commission concluded that providing a mix of CMAs, EAs, and REAGs licenses in the 700 MHz Commercial Services spectrum will be an effective means of providing increased access to spectrum, especially in rural areas, while simultaneously meeting other Commission goals. The Commission agrees with those commenters who observe that a revised mix of smaller license sizes would provide a more balanced set of initial licensing opportunities at this time and make available more licenses to match the needs of different potential users.[154] The most common recommendation made to the Commission by small and rural providers was that additional licenses be made available based on small geographic service areas.[155] Some of these commenters asserted in particular that the use of small geographic license areas provides an incentive for licensees to serve more rural communities, whereas licensing by large geographic license areas may allow licensees to meet their performance requirements only by serving the largest urban markets.[156]

112. *Power Limits and Public Safety Notification.* In this *Report and Order*, the Commission takes steps to address potential intermodulation (''IM'') to public safety operations in the 700 MHz band in a manner that minimizes the impact on commercial licensees in the Upper 700 MHz Band, including small businesses with commercial operations in this band. The Commission declines to impose any technical restrictions on Upper 700 MHz Commercial Services Band licensees to address potential IM interference to 700 MHz public safety operations. The Commission will, however, require Upper 700 MHz Commercial Services Band licensees and 700 MHz public safety entities, upon request from the other, to exchange information about their operating stations and systems. A reporting requirement triggered only by a request of a public safety entity operating on the 700 MHz Band will minimize economic impact on small businesses operating in the commercial 700 MHz Band relative to the alternative of imposing potentially burdensome technical restrictions on Upper 700 MHz Commercial Services Band licensees to address potential IM interference to 700 MHz public safety operations.

113. *911/E911.* Almost all of the commenters addressing the 911/E911 issue support application of the 911/E911 requirements to services in the 700 MHz Commercial Services Band to the extent that those services are similar to the services already subject to the requirements.[157] Several commenters also state, however, that E911 should not apply to 700 MHz Commercial Services Band services to a greater extent than it does to services currently subject to the requirements.[158]

114. The Commission concludes that § 20.18(a) of its rules should be amended to apply 911/E911 requirements to all commercial mobile radio services (CMRS), including services licensed in the 700 MHz Commercial Services Band and the AWS–1 bands, to the same extent as they apply to wireless services currently listed in the scope provision of § 20.18.[159] For those small carriers who can demonstrate in a particular circumstance that implementation is not technically or economically feasible, the option of waiver relief is available. The *Report and Order* concludes, however, that such case-by-case circumstances, if any, should not delay the

[153] 5 U.S.C. 603(c).

[154] *See* Letter from Multiple Commenters to Marlene H. Dortch, Secretary, Fedeal Communications Commission, WT Docket No. 06–150 (filed October 20, 2006) (''Balanced Consensus Plan'') (signatories to the Balanced Consensus Plan are Alltel, Aloha, Blooston, C&W, ConnectME Authority, Corr, Dobson, Leap, Maine Office of Chief Information Officer, MetroPCS, NTCA, Nebraska PSC, North Dakota PSC, RCA, RTG, Union, US Cellular, Vermont et al., Vermont Telephone Company); U.S. Cellular Comments in WT Docket 06–150 at 3; Corr Comments in WT Docket 06–150 at 3; NTCA Comments in WT Dockets 06–150 at 5–6.

[155] *See* Aloha Comments in WT Docket 06–150 at 3–6; Balanced Consensus Plan at attachment; Blooston Comments in WT Docket 06–150 at 2; C&W Reply Comments in WT Docket 06–150 at 2–3; Corr Comments in WT Docket 06–150 at 2–4; Dobson Comments in WT Docket 06–150 at 2–4; Howard/Javed Comments in WT Docket 06–150 at 9; Leap Comments in WT Docket 06–150 at 4, 5–6; MilkyWay Comments in WT Docket 06–150 at 1–6; NextWave Comments in WT Docket 06–150 at 2–6; NTCA Comments in WT Docket 06–150 at 6; OPASTCO Comments in WT Docket 06–150 at 2–3; RCA Comments at 4–8; RTG Comments in WT Docket 06–150 at 2; U.S. Cellular Comments in WT Docket 06–150 at 4.

[156] *See* Corr Comments in WT Docket 06–150 at 4; RCA Comments in WT Docket 06–150 at 9–10.

[157] *See* Aloha Comments in WT Docket 06–150 at 12; AT&T Comments in WT Docket 06–150 at 16; Blooston Comments in WT Docket 06–150 at 8; Cingular Comments in WT Docket 06–150 at 15; Dobson Comments in WT Docket 06–150 at 11; Leap Comments in WT Docket 06–150 at 11; NENA Comments in WT Docket 06–150 at 1–2; Qualcomm Comments in WT Docket 06–150 at 24 (supporting application of E911 to both auctioned and previously unauctioned spectrum); U.S. Cellular Comments in WT Docket 06–150 at 18 (same); TIA Comments in WT Docket 06–150 at 9–10; T-Mobile Reply at 6.

[158] *See* Aloha Comments in WT Docket 06–150 at 12 (700 MHz licensees should be subject to the same E911 requirements, ''no more or less,'' as other licensees providing services where E911 obligations exist); Cingular Comments in WT Docket 06–150 at 15 (supporting application where services met the *E911 Scope Order* criteria); Qualcomm Comments at 24.

[159] *See* 47 CFR 20.18.

implementation of 911/E911 for service providers generally. In this regard, the Commission has observed previously that ''911 service is critical to our Nation's ability to respond to a host of crises,'' [160] and that E911 in particular ''saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently.'' [161] The Commission also takes note of Congress's finding in the ''Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004'' that ''for the sake of our Nation's homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation'' and that ''enhanced 911 is a high national priority.'' [162]

115. *Application of Secondary Markets Spectrum Leasing Policies and Rules to the Guard Bands.* The *Report and Order* maintains the existing requirement for Guard Band licensees to file annual reports regarding their spectrum usage, and thus does not increase the existing recordkeeping and reporting burden. Additionally, the *Report and Order* maintains the existing coordination requirements where all uses of Guard Bands spectrum must be coordinated with public safety operations in the 700 MHz Band. Under the *de jure* transfer leasing option within the Secondary Markets spectrum leasing policies and rules, the Guard Band licensee continues to be responsible for coordinating with the public safety operations. Under the *de facto* transfer leasing option, the lessee becomes primarily responsible for such coordination. As a result, to the extent that a Guard Band licensee is a small entity, the availability of the *de facto* transfer leasing option under the *Report and Order* reduces the overall potential burden on the Guard Band licensee, compared to its previous responsibility as a Guard Band Manager to coordinate all uses of its spectrum.

G. Report to Congress

116. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[163] In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[164]

Ordering Clauses

117. Accordingly, *it is ordered* that pursuant to §§ 1, 4(i), 7, 10, 201, 202, 208, 214, 215, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 316, 317, 324, 331, 332, 336, 337 and 710, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 215, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 316, 317, 324, 331, 332, 336, 337, and 610, this *report and order* in WT Docket No. 06–150, CC Docket No. 94–102, WT Docket No. 01–309, WT Docket No. 03–264, WT Docket No. 06–169, WT Docket No. 96–86 and PS Docket No. 06–229 *is adopted*, and that part 1, part 20, part 27 and part 90 of the Commission's rules, 47 CFR part 1, 47 CFR part 20, 47 CFR part 27, and 47 CFR part 90, *are amended* as set forth in Rule changes. Effective May 16, 2007, except for the amendments to §§ 20.18(a), 27.50(c)(5), and 27.50(c)(8) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

118. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *report and order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

119. *It is further ordered* that the Commission *shall send* a copy of this *report and order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 20, 27 and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.955 is amended by revising paragraph (a)(1) to read as follows:

§ 1.955 Termination of authorizations.

(a) * * *

(1) *Expiration.* Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed. *See* § 1.949 of this part. No authorization granted under the provisions of this part shall be for a term longer than ten years, except to the extent a longer term is authorized under § 27.13 of part 27 of this chapter.

* * * * *

■ 3. Section 1.9005 is amended by revising paragraphs (gg) and (hh) and adding paragraph (ii) to read as follows:

§ 1.9005 Included services.

* * * * *

(gg) The Common Carrier Fixed Point-to-Point Microwave Service (part 101 of this chapter);

(hh) The Multipoint Video Distribution and Data Service (part 101 of this chapter); and,

(ii) The 700 MHz Guard Bands Service (part 27 of this chapter).

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 4. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 5. Section 20.18 is amended by revising paragraph (a) to read as follows:

§ 20.18 911 service.

(a) *Scope of Section.* The following requirements are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

(1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and

(2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

* * * * *

[160] *See E911 Scope Order*, 18 FCC Rcd at 25341 ¶ 1.

[161] *E911 Report and Order*, 11 FCC Rcd at 18678 ¶ 3, 18679 ¶ 5.

[162] 47 U.S.C. 942, notes (1), (4).

[163] *See* 5 U.S.C. 801(a)(1)(A).

[164] *See* 5 U.S.C. 604(b).

■ 6. Section 20.19 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of Section.* Providers of digital CMRS are subject to hearing aid-compatibility requirements to the extent that they:

(1) Offer real-time, two way switched voice or data service that is interconnected with the public switched network; and

(2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such providers are subject to the requirements set forth in this section to the extent that the established technical standard or standards specified in paragraph (b) of this section are applicable to the service provided. This section also applies to the manufacturers of the wireless phones used in delivery of the services specified in this paragraph.

(b) *Technical standard for hearing aid compatibility.* The technical standard set forth in the standard document ANSI C63.19–2001 ''American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19–2001'' (published October 8, 2001—available for purchase from the American National Standards Institute) is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (including in part 980, subpart S of this chapter). A wireless phone used for these services is hearing aid compatible for the purposes of this section if it meets, at a minimum:

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 7. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

§ 27.4 [Amended]

■ 8. Section 27.4 is amended by removing the definition of ''Guard Band Manager.''

■ 9. Section 27.10 is amended by revising the introductory paragraph to read as follows:

§ 27.10 Regulatory status.

The following rules apply concerning the regulatory status in the frequency bands specified in § 27.5.

* * * * *

■ 10. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License period.

* * * * *

(b) *698–764 MHz and 776–794 MHz bands.* Initial authorizations for the 698–764 MHz, 747–762 MHz, and 777–792 MHz bands, will extend for a term not to exceed ten years from February 17, 2009, except that initial authorizations for a part 27 licensee that provides broadcast services, whether exclusively or in combination with other services, will not exceed eight years. Initial authorizations for the 746–747 MHz, 776–777 MHz, 762–764 MHz, and 792–794 MHz bands shall not exceed January 1, 2015. Subsequent license terms shall be for a term not to exceed ten years. Licensees that initiate the provision of a broadcast service, whether exclusively or in combination with other services, may not provide this service for more than eight years or beyond the end of the license term if no broadcast service had been provided, whichever period is shorter in length.

* * * * *

■ 11. Section 27.14 is amended by revising the section heading, redesignating paragraph (e) as paragraph (f), and by adding new paragraph (e) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

* * * * *

(e) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698–746 MHz, 747–762 MHz, and 777–792 MHz bands. These licensees must file a renewal application in accordance with the provisions set forth in § 1.949 of this chapter.

* * * * *

■ 12. Section 27.50 is amended by revising paragraphs (b) and (c) and Table 1 and adding new Table 2, Table 3, and Table 4 to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting a signal in the 746–747 and 762–764 MHz bands must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Fixed and base stations transmitting a signal in the 747–762 MHz and 777–792 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 1000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(3) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 747–762 MHz and 777–792 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section;

(4) Fixed and base stations transmitting a signal in the 747–762 MHz and 777–792 MHz bands with an emission bandwidth greater than 1 MHz must not exceed an ERP of 1000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts/MHz ERP in accordance with Table 3 of this section;

(5) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 747–762 MHz and 777–792 MHz bands with an emission bandwidth greater than 1 MHz must not exceed an ERP of 2000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts/MHz ERP in accordance with Table 4 of this section;

(6) Licensees of fixed or base stations transmitting a signal in the 747–762 or 777–792 MHz bands at an ERP greater than 1000 watts must comply with the provisions set forth in paragraph (b)(8) of this section and § 27.55(c);

(7) Licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census,

and transmitting a signal in the 747–762 MHz or 777–792 MHz bands at an ERP greater than 1000 watts must:

(i) Coordinate in advance with all licensees authorized to operate in the 698–764 MHz and 776–794 MHz bands within 120 kilometers (75 miles) of the base or fixed station; and

(ii) Coordinate in advance with all regional planning committees, as identified in § 90.527 of this chapter, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station;

(8) Licensees authorized to transmit in the 747–762 or 777–792 MHz bands and intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (b)(6) of this section must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized to operate in the 764–776 MHz and 794–806 MHz bands under part 90 of this chapter within 75 km of the base or fixed station and all regional planning committees, as identified in § 90.527 of this chapter, with jurisdiction within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation;

(9) Control stations and mobile stations transmitting in the 747–762 MHz band and the 776–794 MHz band and fixed stations transmitting in the 776–777 MHz band and the 792–794 MHz band are limited to 30 watts ERP;

(10) Portable stations (hand-held devices) transmitting in the 747–762 MHz band and the 776–794 MHz band are limited to 3 watts ERP;

(11) For transmissions in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands, maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel; and

(12) For transmissions in the 747–762 MHz and 777–792 MHz bands, licensees may employ equipment operating in compliance with either the measurement techniques described in paragraph (b)(11) of this section or a Commission-approved average power technique. In both instances, equipment employed must be authorized in accordance with the provisions of § 27.51.

(c) The following power and antenna height requirements apply to stations transmitting in the 698–746 MHz band:

(1) Fixed and base stations transmitting a signal with an emission bandwidth of 1 MHz or less must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section;

(3) Fixed and base stations transmitting a signal with an emission bandwidth greater than 1 MHz must not exceed an ERP of 1000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts/MHz ERP in accordance with Table 3 of this section;

(4) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal with an emission bandwidth greater than 1 MHz must not exceed an ERP of 2000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts/MHz ERP in accordance with Table 4 of this section;

(5) Licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

(i) Coordinate in advance with all licensees authorized to operate in the 698–764 MHz and 776–794 MHz bands within 120 kilometers (75 miles) of the base or fixed station;

(ii) Coordinate in advance with all regional planning committees, as identified in § 90.527 of this chapter, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station;

(6) Licensees of fixed or base stations transmitting a signal at an ERP greater than 1000 watts and greater than 1000 watts/MHz must comply with the provisions of paragraph (c)(8) of this section and § 27.55(b), except that licensees of fixed or base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, must comply with the provisions of paragraph (c)(8) of this section and § 27.55(b) only if transmitting a signal at an ERP greater than 2000 watts and greater than 2000 watts/MHz;

(7) A licensee authorized to operate in the 710–716, 716–722, or 740–746 MHz bands, or in any unpaired spectrum blocks within the 698–746 MHz band, may operate a fixed or base station at an ERP up to a total of 50 kW within its authorized, 6 MHz spectrum block if the licensee complies with the provisions of § 27.55(b). The antenna height for such stations is limited only to the extent required to satisfy the requirements of § 27.55(b);

(8) Licensees intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (c)(6) of this section must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized under this part to operate on an adjacent spectrum block within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation;

(9) Control and mobile stations are limited to 30 watts ERP;

(10) Portable stations (hand-held devices) are limited to 3 watts ERP; and

(11) Licensees may employ equipment operating in compliance with either the measurement techniques described in paragraph (b)(11) of this section or a Commission-approved average power technique. In both instances, equipment

employed must be authorized in accordance with the provisions of § 27.51.

* * * * *

TABLE 1.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 746–747 MHZ AND 762–764 MHZ BANDS AND FOR BASE AND FIXED STATIONS IN THE 698–746 MHZ, 747–762 MHZ, AND 777–792 MHZ BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHZ OR LESS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 2.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–746 MHZ, 747–762 MHZ, AND 777–792 MHZ BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHZ OR LESS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

TABLE 3.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–746 MHZ, 747–762 MHZ AND 777–792 MHZ BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 4.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–746 MHZ, 747–762 MHZ AND 777–792 MHZ BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150

TABLE 4.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–746 MHZ, 747–762 MHZ AND 777–792 MHZ BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHZ—Continued

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

■ 13. Section 27.55 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 27.55 Power strength limits.

* * * * *

(b) *Power flux density limit for stations operating in the 698–746 MHz bands.* For base and fixed stations operating in the 698–746 MHz band in accordance with the provisions of § 27.50(c)(6), the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

(c) *Power flux density limit for stations operating in the 747–762 and 777–792 MHz bands.* For base and fixed stations operating in the 747–762 and 777–792 MHz bands in accordance with the provisions of § 27.50(b)(6), the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

■ 14. Section 27.70 is added to read as follows:

§ 27.70 Information exchange.

(a) *Prior notification.* Public safety licensees authorized to operate in the 764–776 MHz and 794–806 MHz bands may notify any licensee authorized to operate in the 747–762 or 777–792 MHz bands that they wish to receive prior notification of the activation or modification of the licensee's base or fixed stations in their area. Thereafter, the 747–762 or 777–792 MHz band licensee must provide the following information to the public safety licensee at least 10 business days before a new base or fixed station is activated or an existing base or fixed station is modified:

(1) Location;

(2) Effective radiated power;

(3) Antenna height; and

(4) Channels available for use.

(b) *Purpose of prior notification.* The prior coordination of base or fixed stations is for informational purposes only. Public safety licensees are not afforded the right to accept or reject the activation of a proposed base or fixed station or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

(1) Allow a public safety licensee to advise the 747–762 or 777–792 MHz band licensee whether it believes a proposed base or fixed station will generate unacceptable interference;

(2) Permit 747–762 and 777–792 MHz band licensees to make voluntary changes in base or fixed station parameters when a public safety licensee alerts them to possible interference; and

(3) Rapidly identify the source if interference is encountered when the base or fixed station is activated.

■ 15. The subpart heading for subpart F is revised to read as follows:

Subpart F—Competitive Bidding Procedures for the 698–806 MHz Band

■ 16. The subpart heading for subpart G is revised to read as follows:

Subpart G—Guard Band Service (746–747/776–777 MHz and 762–764/792–794 MHz Bands)

■ 17. Section 27.601 is revised to read as follows:

§ 27.601 Authority and coordination requirements.

(a) Subject to the provisions of § 27.2(b), a Guard Band licensee may allow a spectrum lessee, pursuant to a spectrum lease arrangement under part 1, subpart X of this chapter, to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band licensee is licensed, provided such stations comply with Commission Rules and coordination requirements.

(b) Subject to the provisions of § 27.2(b), a Guard Band licensee may allow a spectrum lessee, pursuant to a spectrum lease arrangement under part 1, subpart X of this chapter, to delete, move or change the operating parameters of any of the user's stations that are covered under the Guard Band licensee's authorization without prior Commission approval, provided such stations comply with Commission Rules and coordination requirements.

(c) *Frequency Coordination.*

(1) A Guard Band licensee, or a spectrum lessee operating pursuant to a spectrum lease arrangement under §§ 1.9030 and 1.9035 of this chapter, must notify Commission-recognized public safety frequency coordinators for the 700 MHz Public Safety band and adjacent-area Guard Band licensees within one business day after the licensee or the spectrum lessee has:

(i) Coordinated a new station or modification of an existing station; or

(ii) Filed an application for an individual station license with the Commission.

(2) The notification required in paragraph (c)(1) of this section must include, at a minimum—

(i) The frequency or frequencies coordinated;

(ii) Antenna location and height;

(iii) Type of emission;

(iv) Effective radiated power;

(v) A description of the service area, date of coordination, and user name or, in the alternative, a description of the type of operation.

(3) In the event a licensee partitions its service area or disaggregates its spectrum, it is required to submit the notification required in paragraph (c)(1) of this section to other Guard Band licensees in the same geographic area.

(4) Entities coordinated by a Guard Band licensee, or a spectrum lessee operating pursuant to a spectrum lease arrangement under §§ 1.9030 and 1.9035 of this chapter, must wait at least 10 business days after the notification required in paragraph (c)(1) of this section before operating under the license.

(d) Where a deletion, move or change authorized under paragraph (b) of this section constitutes a discontinuance, reduction, or impairment of service under § 27.66 or where discontinuance, reduction or impairment of service results from an involuntary act subject to § 27.66(a), the licensee must comply with the notification and authorization requirements set forth in that section.

■ 18. Section 27.602 is revised to read as follows:

§ 27.602 Lease agreements.

Guard Band licensees may enter into spectrum leasing arrangements under part 1, subpart X of this chapter regarding the use of their licensed spectrum by spectrum lessees, subject to the following conditions:

(a) The spectrum lease agreement between the licensee and the spectrum lessee must specify in detail the operating parameters of the spectrum lessee's system, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters specified in Commission rules for the use of spectrum identified in § 27.5(b)(1) and (b)(2).

(b) The spectrum lease agreement must require the spectrum lessee to use Commission-approved equipment where appropriate and to complete post-construction proofs of system performance prior to system activation.

§ 27.603 [Removed]

■ 19. Section 27.603 is removed.

§ 27.605 [Removed]

■ 20. Section 27.605 is removed.

§ 27.606 [Removed]

■ 21. Section 27.606 is removed.

■ 22. Section 27.607 is revised to read as follows:

§ 27.607 Performance requirements and annual reporting requirement.

(a) Guard Band licensees are subject to the performance requirements specified in § 27.14(a).

(b) Guard Band licensees are required to file an annual report providing the Commission with information about the manner in which their spectrum is being utilized. Such reports shall be filed with the Commission on a calendar year basis, no later than the March 1 following the close of each calendar year, unless another filing date is specified by Public Notice.

(c) Guard Band licensees must, at a minimum, include the following information in their annual reports:

(1) The total number of spectrum lessees;

(2) The amount of the licensee's spectrum being used pursuant to spectrum lease agreements;

(3) The nature of the spectrum use of the licensee's customers; and,

(4) The length of term of each spectrum lease agreement, and whether the agreement is a spectrum manager lease agreement, or a *de facto* transfer lease agreement.

(d) The specific information that licensees will provide and the procedures that they will follow in submitting their annual reports will be announced in a Public Notice issued by the Wireless Telecommunications Bureau.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 23. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 24. Section 90.555 is added to subpart R to read as follows:

§ 90.555 Information exchange.

(a) *Prior notification.* Public safety licensees authorized to operate in the 764–776 MHz and 794–806 MHz bands may notify any licensee authorized to operate in the 747–762 or 777–792 MHz bands that they wish to receive prior notification of the activation or modification of the licensee's base or fixed stations in their area. Thereafter, the 747–762 or 777–792 MHz band licensee must provide the following information to the public safety licensee at least 10 business days before a new base or fixed station is activated or an existing base or fixed station is modified:

(1) Location;

(2) Effective radiated power;

(3) Antenna height; and

(4) Channels available for use.

(b) *Purpose of prior notification.* The prior coordination of base or fixed stations is for informational purposes only. Public safety licensees are not afforded the right to accept or reject the activation of a proposed base or fixed station or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

(1) Allow a public safety licensee to advise the 747–762 or 777–792 MHz band licensee whether it believes a proposed base or fixed station will generate unacceptable interference;

(2) Permit 747–762 and 777–792 MHz band licensees to make voluntary changes in base or fixed station parameters when a public safety licensee alerts them to possible interference; and

(3) Rapidly identify the source if interference is encountered when the base or fixed station is activated.

(c) *Public Safety Information Exchange.*

(1) Upon request by a 747–762 or 777–792 MHz band licensee, public safety licensees authorized to operate radio systems in the 764–776 and 794–806 MHz bands shall provide the operating parameters of their radio system to the 747–762 or 777–792 MHz band licensee.

(2) Public safety licensees who perform the information exchange described in this section must notify the appropriate 747–762 or 777–792 MHz band licensees prior to any technical changes to their radio system.

[FR Doc. E7–9334 Filed 5–15–07; 8:45 am]

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Federal Register

Wednesday,
May 16, 2007

Part VIII

The President

Executive Order 13432—Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines

Federal Register
Vol. 72, No. 94
Wednesday, May 16, 2007

Presidential Documents

Title 3—

The President

Executive Order 13432 of May 14, 2007

Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

Sec. 2. *Definitions*. As used in this order:

(a) ''agencies'' refers to the Department of Transportation, the Department of Energy, and the Environmental Protection Agency, and all units thereof, and ''agency'' refers to any of them;

(b) ''alternative fuels'' has the meaning specified for that term in section 301(2) of the Energy Policy Act of 1992 (42 U.S.C. 13211(2));

(c) ''authorities'' include the Clean Air Act (42 U.S.C. 7401–7671q), the Energy Policy Act of 1992 (Public Law 102–486), the Energy Policy Act of 2005 (Public Law 109–58), the Energy Policy and Conservation Act (Public Law 94–163), and any other current or future laws or regulations that may authorize or require any of the agencies to take regulatory action that directly or indirectly affects emissions of greenhouse gases from motor vehicles;

(d) ''greenhouse gases'' has the meaning specified for that term in Executive Order 13423 of January 24, 2007;

(e) ''motor vehicle'' has the meaning specified for that term in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(f) ''nonroad engine'' has the meaning specified for that term in section 216(10) of the Clean Air Act (42 U.S.C. 7550(10));

(g) ''nonroad vehicle'' has the meaning specified for that term in section 216(11) of the Clean Air Act (42 U.S.C. 7550(11));

(h) ''regulation'' has the meaning specified for that term in section 3(d) of Executive Order 12866 of September 30, 1993, as amended (Executive Order 12866); and

(i) ''regulatory action'' has the meaning specified for that term in section 3(e) of Executive Order 12866.

Sec. 3. *Coordination Among the Agencies*. In carrying out the policy set forth in section 1 of this order, the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall:

(a) undertake such a regulatory action, to the maximum extent permitted by law and determined by the head of the agency to be practicable, jointly with the other agencies;

(b) in undertaking such a regulatory action, consider, in accordance with applicable law, information and recommendations provided by the other agencies;

(c) in undertaking such a regulatory action, exercise authority vested by law in the head of such agency effectively, in a manner consistent with the effective exercise by the heads of the other agencies of the authority vested in them by law; and

(d) obtain, to the extent permitted by law, concurrence or other views from the heads of the other agencies during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process, and in no event later than 30 days prior to publication of such action.

Sec. 4. *Duties of the Heads of Agencies*. (a) To implement this order, the head of each agency shall:

(1) designate appropriate personnel within the agency to (i) direct the agency's implementation of this order, (ii) ensure that the agency keeps the other agencies and the Office of Management and Budget informed of the agency regulatory actions to which section 3 refers, and (iii) coordinate such actions with the agencies;

(2) in coordination as appropriate with the Committee on Climate Change Science and Technology, continue to conduct and share research designed to advance technologies to further the policy set forth in section 1 of this order;

(3) facilitate the sharing of personnel and the sharing of information among the agencies to further the policy set forth in section 1 of this order;

(4) coordinate with the other agencies to avoid duplication of requests to the public for information from the public in the course of undertaking such regulatory action, consistent with the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*); and

(5) consult with the Secretary of Agriculture whenever a regulatory action will have a significant effect on agriculture related to the production or use of ethanol, biodiesel, or other renewable fuels, including actions undertaken in whole or in part based on authority or requirements in title XV of the Energy Policy Act of 2005, or the amendments made by such title, or when otherwise appropriate or required by law.

(b) To implement this order, the heads of the agencies acting jointly may allocate as appropriate among the agencies administrative responsibilities relating to regulatory actions to which section 3 refers, such as publication of notices in the **Federal Register** and receipt of comments in response to notices.

Sec. 5. *Duties of the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality*. (a) The Director of the Office of Management and Budget, with such assistance from the Chairman of the Council on Environmental Quality as the Director may require, shall monitor the implementation of this order by the heads of the agencies and shall report thereon to the President from time to time, and not less often than semiannually, with any recommendations of the Director for strengthening the implementation of this order.

(b) To implement this order and further the policy set forth in section 1, the Director of the Office of Management and Budget may require the heads of the agencies to submit reports to, and coordinate with, such Office on matters related to this order.

Sec. 6. *General Provisions*. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

THE WHITE HOUSE,
May 14, 2007.

[FR Doc. 07–2462
Filed 5–15–07; 12:04 pm]
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